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THE LAW

OF

TITHES AND TITHE RENT-CHARGE

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BEING A TREATISE ON THE

LAW OF TITHE RENT-CHARGE, WITH A SKETCH OF THE HISTORY AND LAW OF TITHES PRIOR TO THE COMMUTATION ACTS,

AND INCLUDING

THE TITHE ACT OF 1891, WITH THE RULES THEREUNDER.

BY

EDWARD FAIRFAX STUDD, M.A., B.C.L. (Oxon.)

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

SECOND EDITION

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PREFACE

TO THE SECOND EDITION.

THE favorable reception which has been accorded to the First Edition of this little book has encouraged the Author to take advantage of the passing of the recent Act to issue a second. This has afforded the opportunity to correct a few mistakes and supply a few omissions, which unfortunately occurred in the former Edition. The chapters on rating and recovery of tithe rent-charge (in the First Edition headed "Remedies of Tithe-owner") have necessarily been in a great measure re-written, and the order of the chapters has been slightly altered to make the arrangement more natural.

A Table of Statutes has been added, together with the dates of the Cases cited, in

the hope that this may make the book more useful.

While the principal provisions of the recent Act, and the Rules made under it, are incorporated and considered in their appropriate places, it has been thought advisable to print them as a Supplement, that anyone wishing to see for himself the exact language of any provision may be able to do so. The Scale of Costs under the Law of Distress Act, 1888, has also been added.

E. F. S.

11, King's Bench Walk, Temple,
June, 1891.

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THE LAW OF TITHES.

CHAPTER I.

SKETCH OF THE HISTORY AND LAW OF TITHES PRIOR TO THE COMMUTATION ACTS.

THE origin of tithes and the date of their introduction into the Christian Church are shrouded in obscurity; we know, however, that they existed in England in Anglo-Saxon times.

Down to the time of Edgar their payment seems to have been enforced by no law, properly so called, but only by the penalty of ecclesiastical censure; and those who paid them seem to have done so at their own caprice, so long as they were paid to some person or body for ecclesiastical purposes, the tendency being, however, to pay them to the older or "mother" churches.

Edgar, according to Lord Selborne,[1] was the first king to make any law attaching a legal penalty to the non-payment of tithes. He also recognized and en-

[1] "Ancient Facts and Fictions concerning Churches and Tithes."

Chap. I. joined their payment to the mother churches, permitting, however, anyone, who had on his land a church with a burial-place, to give one-third of his tithes to that church. In these private churches Lord Selborne sees the origin of our modern parishes.[1]

In spite, however, of this law of Edgar's, and further ordinances of subsequent monarchs, it is by no means certain that, even at the date of the Conquest, the payment of tithes was altogether general or compulsory.

Soon after the Conquest the payment appears to have become general, and the one-third, which Edgar allowed to be paid to the private (afterwards the parish) church, seems by a gradual process to have become in most cases the whole, but even then tithes were not by any means universally paid to the parish church, "arbitrary" consecrations, as Seldon called them,[2] to other churches and religious institutions continuing down to the time of John, and some even to Edward I.

This is accounted for by the number and influence of the monasteries, which endeavoured to obtain the consecration of tithes to themselves, instead of to the secular or parochial clergy.

According to the opinion hitherto commonly held, tithes were originally devoted to four purposes—1. The use of the bishop; 2. The maintenance of the church's fabric; 3. Distribution among the poor, including the entertainment of strangers; and 4. The use of the in-

[1] "Ancient Facts and Fictions concerning Churches and Tithes."
[2] "History of Tithes."

cumbent. Subsequently, when the sees of the bishops became otherwise amply endowed, they were prohibited from demanding their share, and thus the division became threefold. Chap. I.

That these quadripartite and tripartite divisions existed on the Continent there seems to be no doubt, but Lord Selborne[1] asserts that there is no authority for saying that the tripartite division grew out of the quadripartite, but that each of them was merely local. He further says that he can find no law or canon depriving the bishops of their share, nor any ground for believing that either the quadripartite or tripartite division was adopted in England. He seems to think that the distribution of the church's revenues, including tithes, rested with the bishop alone.

However that may be, there can be no doubt that the feeding of the poor and the entertainment of strangers formed one of the main purposes to which tithes were in early times devoted, at all events in theory, if not in practice.

The monasteries and other spiritual corporations, having by various means acquired all the advowsons within their reach, and, with the licence of the king and consent of the bishop, "appropriated" the benefices to themselves, deputed one of their own body to perform the services of the church in those parishes of which they had thus become the rectors or "parsons,"[2] them-

[1] "Ancient Facts and Fictions concerning Churches and Tithes."

[2] "Parson" = *persona ecclesiæ*, or one that hath full possession of all the rights of a parochial church (Stephen's Commentaries).

Chap. I.

selves seeing to the repair of the church's fabric, and entirely disregarding the third purpose for which tithes are said to have existed, or considering that it was sufficiently fulfilled in supporting themselves, and in such charity, if any, as they might see fit to dispense, applied the whole of the endowments to their own purposes.

In the reign of Henry VIII., when the monasteries and other religious houses were dissolved, all these "appropriations," as they are called, were vested in the Crown, and many have been from time to time granted by the Crown to subjects, who thus became lay rectors or "impropriators," as they are called, to distinguish them from the original "appropriators," who must of necessity have been spiritual.

It has been said[1] that the appropriators were in the habit of deputing one of their body to perform the services in the parishes of which they were the rectors or parsons, and hence arises the distinction between rectorial and vicarial tithes, this deputy being called a *vicarius*, or vicar.

This vicar was at first entirely dependent for his stipend and the duration of his vicarship upon the caprice of the appropriator; but in the reign of Henry IV. a statute (4 Hen. 4, c. 12) was passed, which provided that the vicar should be a secular person, that is, not a member of any religious house; that he should not be removable at the caprice of the appropriator; that he should be canonically instituted and inducted; and

[1] See last page.

that he should be sufficiently endowed at the discretion of the ordinary for three express purposes, viz., to do divine service, to inform the people, and to keep hospitality.

The endowments granted to vicars in pursuance of this statute are usually a portion of the glebe belonging to the parsonage or rectory, and a share of the tithes. There was, however, no uniformity in the endowments; hence some vicarages are more liberally endowed than others, and tithes, which in some parishes belonged to the vicar, in others belonged to the rector or parson. The distinction between rectorial and vicarial tithes was, therefore, an arbitrary one, depending in no way on the nature of the titheable produce.

The appropriators, however, would naturally assign, as far as possible, those tithes which, from their nature, were more difficult to collect; hence, in practice, there was a certain amount of uniformity in the assignments. Thus, probably, it comes that what are called small or privy tithes are usually vicarial, and great tithes rectorial, endowments frequently vesting "small tithes"—*eo nomine*—in the vicar.

The distinction between great and small tithes is one arising from the nature, not the quantity, of the titheable produce.

Tithes are incorporeal hereditaments, and as such they, or the rentcharges substituted for them, are land within sect. 2, sub-sect. 10, of the Settled Land Act, 1882 (45 & 46 Vict. c. 38).[1]

[1] *In re Esdaile*, W. N. 1886, p. 47.

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Where they belong to laymen they are subject to the incidents of other freehold property, and descend to the heir-at-law, but not to the heir, according to the custom of any district or manor;[1] they are subject to dower and tenancy by the courtesy; they can be settled, willed, or leased; and are assets for payment of debts.

Tithes are either—

1. Prædial, being of the produce[2] of the land, *e. g.*, corn, hay, wood, wine, hops, and fruits. They also include agistment tithes, *i. e.*, the tithes of the herbage, grass or growing turnips[3] eaten by barren and unprofitable cattle.
2. Mixed, being of the produce of animals[4] receiving their nourishment from the land; *e. g.*, calves, young pigs, chicken, wool, milk, eggs, &c.
3. Personal, being of the produce of the industry of man. These do not include the profits of a trade, and the only personal tithes payable in later times were those of mills and fish or fishing.

All personal and mixed tithes are small tithes; of

[1] *Doe* v. *Bishop of Llandaff*, 2 New R. 491.

[2] The substance of the land, as distinguished from its produce or increase, is not titheable at common law, though it might be by custom; *e. g.*, lead ore in Derbyshire, and tin in Devon and Cornwall.

[3] By statute 5 & 6 Will. 4, c. 75, turnips severed from the land, if consumed thereon by sheep or cattle, are subject to the same tithe as if consumed unsevered.

[4] Of course this has nothing to do with animals *feræ naturæ*, which belong to no one, and are not titheable at common law, though they may have been by custom.

prædial, some are great and some small. The tithes of corn and hay universally, and of wood in the absence of any local custom to the contrary, are great tithes; so are those of beans and peas, whether cut green or harvested, and of clover, vetches, and tares when harvested. The tithes of the three latter, and of all grasses, when cut and carried green, are small tithes; so are also those of potatoes, turnips, hops, fruits, and agistment.

Besides rectors and vicars there are other persons to whom tithes were sometimes payable. These are as follows:—

1. Parcellers, or proprietors of certain parcels of tithes originally forming part of a rectory, but which have been granted away.
2. Portionists, or proprietors of certain portions of tithes which never formed part of any rectory, being the tithes of particular manors or farms which, prior to the parochial division of tithes, were granted to some spiritual person or body. Some of these portions still remain in the possession of the original grantees or their spiritual successors; while others, on the dissolution of the monasteries, became vested in the Crown, some of these latter being retained by the Crown, and others granted out to subjects. Hence "portions" are payable sometimes to the rector or vicar of another parish.
3. Perpetual curates, who may have a right to tithes by prescription, which is especially the case in

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Wales. The origin of perpetual curates was as follows:—Some appropriations were for various reasons exempt from the provision of 4 Hen. 4, c. 12, above[1] mentioned, and in such cases no vicar has ever been endowed. There exists, however, in most of these chapelries a permanent minister in holy orders, termed a perpetual curate, appointed of old by the rector, and endowed with portions of the tithe.[2]

4. The Crown, in respect of tithes of extra-parochial places.

Tithes in parishes are due of common right to the rector, and it is for the person claiming any portion thereof to establish his claim by evidence. Tithes were payable in respect of the produce of all lands which were not barren, *i.e.*, naturally incapable of producing titheable produce, except the following:—

1. Crown lands, by virtue of the Crown's prerogative, while in the occupation of the Crown or its lessee, but not when granted away to a subject.
2. Church lands or glebe, while in the occupation of the parson or incumbent, by virtue of the maxim:—"Ecclesia decimas non solvit ecclesiæ." Thus the rector and vicar of the same parish would not pay tithes to one another, but the rector or

[1] See p. 4.

[2] By statute 31 & 32 Vict. c. 117, it is enacted that the incumbent of every parish, not being a rector, shall be styled a vicar, and his benefice a vicarage. This statute only affects his style, and in no way alters the incidents to perpetual curacies.

vicar of one parish might pay tithes to the rector or vicar of another.[1]

3. Lands which having been parcel of the possessions of one of the three privileged orders—Cistercians, Templars, or Hospitallers—are discharged from tithes while in the occupation of the owner, but not of his tenant or lessee.
4. Any abbey lands (as they are called), the owner of which could show that they were part of the possessions of one of the religious houses dissolved in the reign of Henry VIII., and were at the time of the dissolution held free or discharged from tithe; religious houses having had the power to get their lands discharged from tithes in various ways. In this and the following cases the land is discharged, whether in the occupation of the owner or not.
5. Lands between the owner of which and the incumbent, with the consent of the ordinary and patron, an agreement had been entered into that they should be discharged for the future from the payment of tithes in consideration of some land or other "real" recompense given in lieu thereof, which is called a composition real. 2 & 3 Will. 4, c. 100, s. 2, provides that every such composition, which had then been made, or confirmed by the decree of a Court of Equity in a suit properly instituted, and had not since

[1] See *Warden* v. *Dean, &c. of St. Paul's*, 4 Price, 65.

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been set aside or departed from, should be held valid in law.

6. Any lands in respect of which the existence of a *modus decimandi* (commonly called a "modus"), or customary mode of tithing different from the ordinary payment of one tenth, could be proved from time immemorial.[1]

For a modus to be good, six rules must be observed:

(1) It must be certain and invariable.

(2) It must be beneficial to the parson himself, (*e.g.*, to repair the chancel,) not merely to the church or parish.

(3) It must be something different from the thing compounded for—*e.g.*, one load of hay instead of all tithe of hay is not a good modus.

(4) It must not be for another species of tithe—*e.g.*, a modus for milch cows will not discharge from payment of tithe for barren cows.

(5) It must be in its nature as durable as the tithes discharged by it.

(6) It must not be "rank," or too large.

Rules (3) and (6) arise obviously from the fact that a modus is assumed to have arisen from a contract between tithe payer and tithe owner, as in the case of a composition real, and it is absurd to suppose that either party would have entered into a grossly one-sided one, and, therefore, the alleged modus carries in itself

[1] See *Earl of Stamford and Warrington* v. *Dunbar*, 13 M. & W. 822.

the proof that it can never have had any foundation in contract.

7. Any lands the owner of which could prescribe *in non decimando*, *i.e.*, show that they had been free from the payment of tithes from time immemorial. Only a spiritual person or body, or their successors deriving a title from them, and the Crown could prescribe *in non decimando*. A layman must have given positive proof of the origin of the discharge of his lands; mere non-payment from time immemorial not sufficing in his case. This distinction, however, became subsequently of little moment in consequence of the statute 2 & 3 Will. 4, c. 100, next to be considered.

8. Any lands in respect of which non-payment of tithes, or the existence of a modus, could be proved for the time fixed by statute 2 & 3 Will. 4, c. 100,[1] which provides as follows:—

(1) Where the tithe is claimed by the Crown, the Duchy of Lancaster, or any lay person not being a corporation sole, or by any corporate body,—

(i) If a modus has been paid, or the land been enjoyed free from all tithe for thirty years, this shall create an exemption, unless it can be shown, in the case of payment of a

[1] This Act is not impliedly repealed by statute 3 & 4 Will. 4, c. 27. The two Acts co-exist (*Dean, &c. of Ely* v. *Bliss*, 2 De Gex, M. & G. 459). But see note p. 13.

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modus, that tithes or money, or something different from the modus, in the case of free enjoyment, that tithes or other things in lieu thereof, have been paid within the thirty years; or, that the modus or free enjoyment was under some writing.

(ii) If a modus has been paid, or the land been enjoyed free from tithe for sixty years, this shall create an absolute exemption, unless proved to have been under some agreement or consent in writing.[1]

(2) Where the tithe is claimed by a corporation sole, the payment of a modus or free enjoyment during the time of two successive incumbents, and three years after the induction of a third, if such period amounts to sixty years, or if it does not, then the payment of the modus or free enjoyment for sixty years shall create an exemption.

Under this Act it has been held that mere non-payment or non-render creates an exemption from payment of tithes, and that the statute thus creates an entirely new ground of exemption,[2] mere non-payment being no defence at common law.[3]

It was, however, held in the same case, that no exemption could be claimed under the Act from any par-

[1] As to what is a sufficient agreement or consent in writing, see *Twynbee* v. *Brown*, 3 Exch. 117.

[2] *Salkeld* v. *Johnston*, 1 Mac. & Gord. 242.

[3] *Andrews* v. *Drever*, 3 Cl. & F. 314.

ticular tithe, but only from the tithes of every kind affecting the land. Chap. I.

Again, any claim to tithes might be barred under the Statutes of Limitations, 3 & 4 Will. 4, c. 27, now amended by 37 & 38 Vict. c. 57, s. 9.[1]

[1] See note to p. 11. It was held in the case of *Dean of Ely* v. *Bliss* (2 De Gex, M. & G. 459), that this statute only applied as between rival tithe owners, and not between tithe payer and tithe owner; but this case was discussed by Lord Selborne in his judgment in *Irish Land Commission* v. *Grant* (10 App. Cas. 14), and must be taken to be overruled by the judgment of the House of Lords in that case.

and see 52 S.T. 763 for review of the case of Evans v Bolton Times Newspaper 22nd August 1906.

CHAPTER II.

COMMUTATION AND APPORTIONMENT.

SECT. 1.—*General Observations.*

IN the year 1836 was passed the Act 6 & 7 Will. 4, c. 71, providing for the commutation of tithes throughout England and Wales into a money payment or rent-charge, which, though the exact payment varies each year with the average price of corn in a manner to be noticed hereafter,[1] is fixed in this sense, that the amount payable in each year is calculated according to the average price of corn upon a fixed valuation or rent-charge. This process has for some time been practically complete. It is, however, impossible to understand the present position of the law of tithe, especially with a view to its redemption, without going at some length into the process of commutation. Moreover, many of the provisions applicable to commutation are by later Acts extended to redemption, and others, such as those relating to maps, are of practical importance at the

[1] See p. 42.

present day. Before, however, proceeding to consider the process in detail, it will be convenient to consider certain definitions and provisions contained in the Act of 6 & 7 Will. 4 (which will hereafter be called the principal Act), and the various subsequent Acts, remembering that all the Acts are to be read as one with the principal Act.

The following definitions are given in sects. 12 and 13 of the principal Act:—

1. "Person" includes the King and Queen, and any body corporate, whether aggregate or sole.
2. Any word used in the singular number includes the plural, and *vice versâ*.
3. Masculine includes feminine.
4. "Lands" includes all messuages, tenements, and hereditaments.
5. "Tithes" includes all uncommuted tithes, portions and parcels of tithes, and all moduses, compositions real, and prescriptive and customary payments.
6. "Parish" and "parochial" include every parish, extra-parochial place, township or village within which overseers of the poor are separately appointed, and every district of which the tithes are payable under a separate impropriation or appropriation, or in a separate parcel or portion, or which the commissioners appointed under the Act may by any order direct to be considered as a separate district for the commutation of tithes.

Chap. II. Sect. 1.

7. "Landowner" or "titheowner," or "owner of lands," or "owner of tithes," include—

(1) Every person in the actual possession or receipt of the rents or profits of any lands or tithes, without regard to the real amount of interest of such person, except—(i) any tenant for life or lives or years holding[1] under a lease or agreement for a lease on which a rent of not less than two-thirds of the clear yearly value of the premises comprised therein is reserved; and (ii) any tenant for years holding under a lease or agreement for a lease for a term which shall not have exceeded fourteen years from its commencement:

(2) Where tithes or lands have been leased or agreed to be leased to any person for life or lives or years by any lease or agreement for a lease, on which a rent less than two-thirds of the clear yearly value of the premises comprised therein shall have been reserved, and of which the term shall have exceeded fourteen years from its commencement, the person for the time being in the actual receipt of the rent reserved upon such lease or agreement, jointly with the person liable to the payment of the rent:

(3) Where any person is in possession or receipt of the rents or profits of any tithes or

[1] This and the following words qualify the words "tenant for life or lives," as well as "tenant for years." Tenant for life under a will or settlement, if in receipt of the rents and profits, is an "owner."

lands under any sequestration, extent, elegit, or other writ of execution, or as a receiver under any order of a Court, the person against whom such writ has issued, or who but for such order would have been in possession, jointly with the person in possession :[1]

(4) The Ecclesiastical Commissioners, under 4 & 5 Vict. c. 39, s. 29, in respect of lands, tithes, &c. vested in them under certain statutes :

(5) Where the ownership of lands or tithes is vested in the Crown, the First Commissioner of Woods, Forests, and Land Revenue (see 14 & 15 Vict. c. 42, s. 2) ; and for the purposes of the Tithe Act, 1891, the Commissioners of Woods (sect. 9, sub-sect. (1) (a) of that Act) :

(6) Where the ownership of lands or tithes is vested in the Crown in right of the Duchy of Lancaster or Duchy of Cornwall, the Chancellor of the Duchy of Lancaster, or the officers of the Duchy of Cornwall, entitled to grant leases of the Duchy lands; and for the purposes of the Tithe Act, 1891, where the ownership is vested in the Duke of Cornwall, the Keeper of the records of the Duchy.

Sect. 14 of the principal Act provides that when the same person is owner of lands and of tithes, or owner of

[1] Sect. 2, sub-sect. (5) of the Tithe Act, 1891, provides that any sum ordered by the Court to be recovered on account of rent-charge shall be payable by a trustee in bankruptcy, sheriff, or officer of a Court in possession of the lands, as if it were rent-charge recoverable under the previous Acts.

lands or tithes and patron of the benefice to which the tithes belong, he may be dealt with in each of the several characters borne by him.

Sect. 13 provides that where the Crown is patron of any benefice, the Lord High Treasurer, or First Lord Commissioner of the Great Seal, or, if the patronage is vested in the Crown in right of the Duchy of Lancaster, the Chancellor of the Duchy, may act for the Crown.

Sect. 15 provides that where any patron of a benefice, or owner of lands or tithes, or any person interested in any question as to tithes, is a minor, idiot, lunatic, feme covert,[1] beyond the seas,[2] or under any other legal disability, the guardian, trustee, committee, husband, or attorney, or any person nominated by the commissioners, after inquiry, under their hands and seal, may act in his or her stead; and sect. 16 enables any land or tithe owner, by power of attorney under his hand, to appoint an agent to act for him. This power of attorney, which need not be by deed, or a copy thereof authenticated by two credible witnesses, must be appended to every agreement executed by the agent so appointed, and must be sent with it to the office of the commissioners. It is exempt from stamp duty (sect. 91).[3]

[1] But see now Married Women's Property Act, 1882.

[2] This disability is abolished by 19 & 20 Vict. c. 97, s. 10.

[3] The following form of a power of attorney is given by the Act. It may be used with the necessary alterations, but is not compulsory:—"I, A. B., of [&c.], do hereby appoint C. D., of [&c.], to be my lawful attorney, to act for me in all respects as if I myself were present and acting in the execution of an Act passed in the sixth and seventh years of his present Majesty, intituled [&c.]."

For the purpose of carrying the Tithe Commutation Acts into effect, commissioners were appointed by sects. 1 and 2 of the principal Act under the style of "The Tithe Commissioners for England and Wales."

Their appointment having been continued by subsequent statutes, they were, by 4 & 5 Vict. c. 35, ss. 1 and 2, and 14 & 15 Vict. c. 53, united with the Copyhold Commissioners and Inclosure Commissioners for England and Wales, and by sect. 48 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), those three sets of commissioners were united into one body under the style of "Land Commissioners for England"; but now by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), the powers exercised by those commissioners are transferred to the board established by that Act.

To the commissioners so appointed various powers have been given by statute, of which the following may conveniently be noted here:—

1. Under sects. 4 and 11 of the principal Act they may appoint, amongst other officers, assistant commissioners, to whom they may delegate all powers conferred on them, which do not require to be exercised under their seal.
2. Under sect. 10 of the principal Act, and sect. 24 of 3 & 4 Vict. c. 15, they may summon witnesses, administer oaths to them, and examine them upon oath upon any matter relating to the commutation,[1] and under sect. 93 anyone refus-

[1] Extended by sect. 9 of 49 & 50 Vict. c. 54 to the working of that Act.

ing to attend, if within ten miles, or to give evidence, is guilty of a misdemeanor, and anyone wilfully giving false evidence, or making or subscribing a false affidavit or declaration, is guilty of perjury.

3. Under sect. 10 of the principal Act, and sect. 24 of 3 & 4 Vict. c. 15, they may cause to be produced upon oath all books, deeds, contracts, agreements, accounts, writings, terriers,[1] maps, plans and surveys, or copies thereof, in any way relating to any matter connected with the commutation,[2] except documents relating to the title to any lands or tithes, or which the person required to produce them may swear do not relate to the matter in issue;[3] and, by sect. 93, anyone wilfully altering, withholding, destroying, or refusing to produce any of the documents above enumerated, or any copy thereof, is guilty of a misdemeanor. No one, however, can be required to travel more than ten miles in obedience to any summons to produce any such documents. The commissioners may also permit copies to be taken upon payment of the expense by the person requiring them.

[1] A terrier is a document acknowledging rents or services due to the lord, or tithes due to a tithe owner.

[2] Extended by sect. 9 of 49 & 50 Vict. c. 54 to the working of that Act.

[3] This provision did not take away the right of a plaintiff in a question of disputed right to file a bill of discovery in Equity (*Morris* v. *Duke of Norfolk*, 9 Sim. 472).

4. Under sects. 45 and 46 of the principal Act, and sects. 9 and 10 of 5 & 6 Vict. c. 54, they may hear and determine, subject to appeal, any suits pending touching the right to any tithes,[1] or any question of any modus, composition real, or customary payment, or any claim of exemption from or non-liability to the payment of any tithes, and may determine the situation or boundary of any lands, or any difference which may hinder the making of the award, and may make an award, founded upon their decision or on that of the Court on an appeal. This award may also deal with the costs of any such suit, and is made by the Act conclusive evidence of the liability or non-liability of the lands, the amount of any arrears, and the liability of the several parties to the payment of costs.

5. Besides the power of settling boundaries above mentioned, the Acts give the commissioners extensive powers as to boundaries.

   Sect. 2 of 7 Will. 4 & 1 Vict. c. 69 enables them, in case of any doubt or dispute as to the boundaries of any district or parish in which the tithes were to be commuted, on the application of the owners of two-thirds of the lands in the parish, to settle them subject to

[1] This does not authorize the commissioners to decide any question between rival claimants to the tithes, but only suits between tithe owner and tithe payer as to whether the tithe is or is not payable in kind. (See note to Chitty's Statutes, and cases there collected.)

certain formalities, and to the right of any person dissatisfied to remove their judgment into the Queen's Bench by certiorari, as provided by sect. 3 of the same Act and sect. 35 of 2 & 3 Vict. c. 62.

Again, sect. 34 of 2 & 3 Vict. c. 62, extended by sect. 28 of 3 & 4 Vict. c. 15, gives them further powers to settle boundaries between parishes, townships and individual owners;[1] and sect. 21 of 9 & 10 Vict. c. 73 enacts that any determination of the commissioners as to boundaries, which has not been removed within six calendar months, is to be valid and conclusive, notwithstanding any want of form.

Finally, sect. 36 of 2 & 3 Vict. c. 62 empowers them to apportion the costs of any inquiry into boundaries among the persons interested, and provides for the recovery of the costs so apportioned, as in the case of other expenses under the Acts.

6. Under sect. 73 of the principal Act they, or any assistant commissioner, may order all the expenses incurred by them in the exercise of the powers considered under 2, 3, and 4, including the expenses of witnesses and of the production of documents, to be paid by the parties interested in such proportions as they may think fit.

7. Sect. 25 of 2 & 3 Vict. c. 62 empowers them to

[1] See *Re Ystradgunlais Commutation*, 8 Q. B. 32, and *Re Dent Commutation*, id. 43.

adjourn any meeting by notice under their hands without attending to do so.

This will be a convenient place in which to note certain miscellaneous provisions of the Acts.

1. Sect. 2 of the principal Act provides that all agreements and awards confirmed by the commissioners shall be sealed or stamped with their common seal, and all agreements and awards, and other instruments proceeding from their board, and all copies of any such purporting to be so sealed or stamped, shall be received in evidence without any further proof thereof. The section further provides that no agreement or award shall be of any force unless so sealed or stamped.[1]
2. Sects. 47 and 48 enact that no suits or proceedings under the Acts are to abate or cease by reason of the death of any person interested.
3. Sect. 49 enacts that nothing in the Acts is to affect the operation of the Statute of Limitations (3 & 4 Will. 4, c. 27), as amended by 37 & 38 Vict. c. 57, s. 9.
4. Sect. 90 enacts that the Acts shall not extend to Easter offerings,[2] mortuaries,[3] surplice fees,[4]

[1] As to sealing the map or plan of the apportionment, see pp. 38, 41.

[2] Easter offerings are small sums paid to parochial clergy at Easter as a composition for personal tithes.

[3] Mortuaries are customary gifts claimed by and due to the parson in certain parishes on the death of a parishioner.

[4] Surplice fees are fees payable on ministerial offices of the church, *e.g.*, marriages, baptisms, &c.

tithes of fish or fishing, personal tithes (except tithes of mills), mineral tithes, or any payment instead of tithes within the city of London,[1] nor to any permanent rent-charge, or other rent or payment in lieu of tithes calculated according to any rate or proportion in the pound on the rent or value of any houses or lands in any city or town under any custom or private Act of Parliament, nor to any lands or tenements the tithes of which had been, prior to 1836, commuted or extinguished under any Act of Parliament; but sect. 9 of 2 & 3 Vict. c. 62 provides that Easter offerings, mortuaries, surplice fees, or tithes of fish or fishing, or of minerals, may be commuted by parochial agreement before the confirmation of any apportionment after a compulsory award.

5. Sects. 1—9, 17, and 39 of 23 & 24 Vict. c. 93 provide for the conversion of corn rents payable under any local Act in lieu of tithes into a rent-charge upon the same lines as the commutation of tithes; and the statute 48 & 49 Vict. c. 32 provides for the redemption of the rent-charge.[2]

6. Sects. 91 and 92 of the principal Act, sect. 12 of

[1] Payments in lieu of tithes within the city of London under 37 Hen. 6, c. 12, are not really payments in lieu of tithes at all, the so-called "tithes" having, in the absence of express statutory provisions, none of the attributes of tithes at common law; they are not recoverable by distress, and are not rateable to the poor under stat. 43 Eliz. c. 2 (*Esdaile* v. *Assessment Committee of the City of London*, 19 Q. B. D. 431; see also *Payne* v. *Esdaile*, 13 App. Cas. 613). They do not, therefore, properly fall within the scope of this book.

[2] See p. 88.

7 Will. 4 & 1 Vict. c. 69, and sect. 2 of 1 & 2 Vict. c. 64 provide that no stamp duty shall be charged upon any advertisement, agreement, award, deed, declaration, or power of attorney inserted, made, or used for the purpose of carrying into effect any of the provisions of the Acts, or upon the correspondence of the commissioners.

7. Sect. 94 of the principal Act enacts that no action shall be brought after three calendar months from the time of the act complained of against any commissioner or assistant commissioner, justice of the peace, valuer, umpire, or surveyor, for anything done under the Acts.[1] Of every action brought twenty-one days' notice is to be given in writing to the person against whom the complaint is made; and, in the event of the defendant succeeding in any action so brought, he is to have his costs as between solicitor and client.

8. Sect. 95 of the principal Act provides that no proceedings under the Acts shall be quashed for want of form, or be removed by certiorari, except in cases relating to boundaries, in which an appeal by certiorari is expressly granted by 7 Will. 4 & 1 Vict. c. 69, s. 3.

Besides the above, the Acts contain certain provisions incidental to the process of commutation, which it is

[1] This provision only applies to acts done within the authority given by the Acts (*Acland* v. *Buller*, 1 Exch. 837).

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unnecessary to consider in detail at the present day, *e. g.*, provisions for—

The sale of buildings and their sites, rendered unnecessary by the commutation (sect. 87 of the principal Act, and sect. 15 of 2 & 3 Vict. c. 62);

The surrender by any lessee of tithes of his lease (sect. 87 of the principal Act);

The fixing of a time for the commencement of the rent-charge, and provisions incidental thereto (7 Will. 4 & 1 Vict. c. 69, s. 11; 2 & 3 Vict. c. 62, s. 10; 3 & 4 Vict. c. 15, ss. 1—13, and 5 & 6 Vict. c. 54, ss. 3, 12);

The exemption from rent-charge of gardens and lawns of small extent, the tithes of which have not been valued (3 & 4 Vict. c. 69, s. 25);

And enabling the commissioners, where rent-charge has been apportioned on certain tenements of small extent, from which no tithes had been taken for seven years prior to 1836, to cause a new apportionment to be made exempting such tenements (3 & 4 Vict. c. 15, ss. 26, 27).

The Acts also contain provisions enabling the commissioners to define and facilitate the exchange of glebe lands, or lands held by any spiritual person in right of his benefice, or any annual payment or augmentation so belonging to him (5 & 6 Vict. c. 54, s. 5; 9 & 10 Vict. c. 73, s. 22; 23 & 24 Vict. c. 93, s. 41; and 41 & 42 Vict. c. 42, s. 7); the consideration of these, however, would not properly fall within the scope of the present book.

Having now considered certain preliminary matters, we come to the process of commutation itself.

The word "commutation" is not properly applicable to the whole process, though the Acts are entitled "Commutation Acts."

The process consists of two distinct operations, first, the "commutation," or ascertainment of the value of the whole of the tithes payable in the parish, and the substitution therefor of an equivalent total sum payable annually by way of rent-charge by the whole parish; and secondly, the "apportionment" of this sum, when ascertained, among the various titheable lands in the parish.

It is proposed, therefore, in the remaining sections of this Chapter to give, first, an outline of commutation, properly so called, in ordinary cases; secondly, an outline of apportionment in similar cases; thirdly, to deal separately with certain exceptional cases; and, fourthly, with the expenses of commutation and apportionment.

Sect. II.—*Commutation in Ordinary Cases.*

Commutation might be effected in two ways—

1. By parochial agreement, or
2. Compulsorily by the award of the commissioners.

1. A parochial agreement might be made at a parochial meeting, specially convened with certain for-

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malities (see sect. 17 of the principal Act), by any land or tithe owners interested as to one quarter of the lands or tithes in the parish. At any such meeting, or adjourned meeting (sect. 20), owners of at least two-thirds of the titheable lands, and of at least two-thirds of the great and two-thirds of the small tithes in the parish,[1] being present, might agree for the payment of an annual sum by way of rent-charge,[2] variable, as is hereafter[3] explained, with the price of corn, instead of the whole, or of the great, or of the small tithes of the parish.

By sect. 18 of the principal Act, power was given to parochial meetings to make a provisional agreement, which, upon being executed by the required majority of land and tithe owners within six months, became as binding as an agreement duly made at the meeting, and the same is provided in sect. 25 as to agreements pending at the time of the passing of the Act.

In case of any suit pending as to the right to tithes, or any question arising as to the existence of any modus, composition real, or prescriptive or customary payment, or any claim to exemption from, or non-liability to, tithes, or any question touching the situation or boundary[4] of any lands, or any difference

[1] Sect. 19 of the principal Act provides how the proportionate interest of any land or tithe owner is to be estimated.

[2] It would seem that in settling the amount of rent-charge the contingent value of tithes, in cases where they are suspended or contingent, in the case, *e.g.*, of glebe or Crown lands, should be added to the value of the other tithes of the parish.

[3] See p. 42.

[4] As to the powers conferred on the commissioners to settle boundaries, see pp. 21, 22.

arising whereby the making and execution of the agreement might be hindered, power was given by sect. 24 to refer them to arbitration.

All matters in dispute having been settled, the agreement was executed by the parties, and dated the day on which the first signature was affixed. Every such agreement must set forth, either in itself or in some schedule—

(1) All the lands of the parish subject to tithes;

(2) The true or estimated measure of the titheable land which was cultivated as arable, meadow, pasture, wood, common, or in any other way whatsoever;

(3) Whether any modus, composition real, or prescriptive or customary payment was payable instead of any or all of the tithes of the parish, and, if so, which lands or tithes were covered thereby;

(4) Which of the tithes, moduses, &c., were payable to the tithe owner, or to each of several tithe owners, and in what right;

(5) Which, if any, lands in the parish were or had been exempt from payment of any tithes, specifying the tithes and the circumstances of the exemption;

(6) The amount in words of the sum agreed to be paid instead of tithes, moduses, &c., distinguishing, in the case of several tithe owners, the sums payable to each, and in the case of tithes of different lands payable to different

tithe owners, or to the same tithe owner in different rights, the sums payable in respect of such different lands; and

(7) All other particulars required by the commissioners, who, by sect. 22, were required to issue forms of agreement.

In all cases where the tithes belonged to an ecclesiastical person in right of any spiritual dignity or benefice, sect. 26 required the agreement to receive the consent in writing under his hand, in the case of an archbishop or bishop, of the Crown (signified by the Lord High Treasurer or First Lord Commissioner of the Treasury), and in the case of any other incumbent, of the patron or person entitled to the next presentation; and sect. 28 further required that prior to its confirmation by the commissioners it should be submitted to the bishop of the diocese.

After execution the agreement was sent to the commissioners, who, by themselves or some assistant commissioner, inquired whether the agreement had been made without fraud or collusion, and whether or not it ought to be confirmed; and if they were of opinion that it ought, they confirmed it accordingly under their hands and seal, adding the date of the confirmation. The fact and date of this confirmation were then published by them in the parish. Every agreement so confirmed was, by sect. 27 of the principal Act, made binding on all persons interested in the lands or tithes.

2. In default of parochial agreement the commissioners might give a notice of their intention to make

an award,[1] and after the expiration of twenty-one days from such notice might proceed to ascertain the total clear annual value of the tithes in the parish. This they did by ascertaining the clear annual value, after deductions for certain expenses of collecting, &c., of the tithes of the parish according to the average of seven years preceding Christmas, 1835. In any case, however, where notice might be given them, as required by sect. 28 of the principal Act, that this average value would not fairly represent the sum which ought to be taken for calculating a permanent commutation, they were empowered by that section to add to or deduct from the average value a sum not exceeding one-fifth of such average value; and in the event of the tithes, or any part thereof, having been compounded for or demised to any owner or occupier of the lands during the seven years, or any part thereof, in consideration of any rent or payment instead of tithes, such rent or payment was to be taken as the clear annual value of those tithes for that period.[2]

In estimating the value of the tithes no deduction was to be made for any parliamentary, parochial, county, and other rates, charges, and assessments to which the tithes were liable; and in the case of any rent or payment instead of tithes being paid free from such rates,

[1] Even after such notice a parochial agreement might be made at any time prior to the confirmation of the award, and such agreement when confirmed by the commissioners became valid, and rendered null and void all proceedings taken towards making the compulsory award (5 & 6 Vict. c. 54, s. 2).

[2] See *Reg.* v. *Tithe Commissioners*, 12 L. J. Q. B. 109.

&c., a sum equivalent to their amount was to be added to such rent or payment before it could be taken as the clear annual value of the tithes (sect. 37 of the principal Act).

If any of the lands in a parish were coppices, sect. 41 of the principal Act empowered the commissioners, upon notice given to them, either by the owner of the coppices, or the owner of the tithes payable in respect of them, that the tithes of such lands should be separately valued, to estimate the value of the tithes according to rules laid down by them, but having regard to the average value of the tithes of coppice in that and neighbouring parishes during seven years preceding Christmas, 1835, and estimating it as chargeable to all parliamentary, parochial, county and other rates, charges and assessments to which the tithes were liable, and to add the clear annual value so estimated to the other tithes of the parish.

If any modus, composition real, prescriptive or customary payment was payable instead of any of the tithes of a parish, sect. 44 of the principal Act provided that the commissioners should estimate the amount in the same manner as the amount of the tithes, and add the amount so ascertained to the amount of the tithes of the parish.

If any lands in a parish had during any part of the seven preceding years been exempted from payment of tithes owing to having been enclosed under any Act of Parliament, or converted from barren or waste ground, or from having been parcel of the possessions of any privileged order, or glebe or Crown lands, sect. 43 of the principal Act, and sects. 11 and 12 of 2 & 3 Vict.

c. 62 empowered the commissioners, upon notice that the tithes of such lands should be separately valued, to estimate their value, having regard to the average rate awarded, or fixed by voluntary agreement (sect. 4 of 5 & 6 Vict. c. 54), in respect of lands of the like description and quantity in the same and neighbouring parishes, and to add the value so estimated to the other tithes of the parish.

The commissioners or assistant commissioners having thus ascertained and estimated the total value of the tithes of a parish, framed a draft award containing the same particulars as a parochial agreement.[1] A copy of this award was then deposited in the parish for inspection, and notice given of a meeting to hear objections, if any. Such objections, if any, having been heard and determined, and the award (if necessary) amended, it was signed by the commissioners or assistant commissioners making it and sent to the office of the commissioners, who, having satisfied themselves that all necessary proceedings had been duly observed, confirmed the award under their hands and seal, adding the date of the confirmation, and publishing it in the parish.

Every award so confirmed became binding on all persons interested in the same way as a parochial agreement.[2]

In certain cases of fraud or error, sect. 8 of 2 & 3 Vict. c. 62 empowered the commissioners, before the confirmation of the apportionment,[3] by a separate award

[1] See pp. 29, 30. [2] See p. 30. [3] See pp. 37, 38.

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to rectify the agreement or award as might seem just; and power is given them by sect. 3 of 10 & 11 Vict. c. 104, where lands are improperly included or charged with rent-charge in any confirmed instrument of apportionment, to correct it.[1]

Sect. 3.—*Apportionment in Ordinary Cases.*

The total value of the tithe rent-charge payable in any parish having been ascertained as described in the last section, either by parochial agreement or by award of the commissioners, the majority in number and interest of the landowners or their agents, being present at a parish meeting, which, in the case of commutation by agreement, might be the original, or any subsequent meeting called in like manner, or, in case of a compulsory award, a meeting specially called by the commissioners, might appoint a valuer, or, if the majority in number and interest were unable to agree, an even number of valuers, half chosen by the majority in number, and half by the majority in interest, to apportion the total value, and the expenses of the apportionment, among the various lands in the parish, either upon a basis agreed upon by the meeting, or in default of agreement at his or their discretion, having regard to the average titheable produce and productive quality of the several lands.

[1] See p. 58.

If two or more valuers were appointed, they might, before they commenced the apportionment, appoint an umpire. The valuers or umpire so appointed, and their assistants, were empowered by sect. 34 of the principal Act to enter on any lands for the purpose of making the apportionment, and by sect. 35 to make use of any old maps and plans of the accuracy of which they might be satisfied.

In default of appointment of valuers, and of the completion of the apportionment within six months of the confirmation of the agreement or award, the commissioners, or an assistant commissioner, might proceed to apportion the rent-charge agreed or awarded among the several lands in the parish, according to their discretion, in the same manner as valuers appointed by a parochial meeting, giving the lands the full benefit of any modus, composition real, prescriptive and customary payment, and of every exemption from or non-liability to tithes affecting them. To assist them in the apportionment, sect. 59 of the principal Act empowered them to appoint surveyors and tithe valuers, with the same powers as to entry on lands as was conferred on valuers appointed at a parochial meeting.

The apportionment might be either (1) in gross, *i. e.*, so much on the whole farm, or (2) on the separate fields or closes of land.

Of every apportionment a draft was made, setting forth the agreement or award under which it had been made, and all schedules annexed thereto.

This draft, either in itself or in some schedule, should contain:—

(1) The name and description of the several lands comprised in the apportionment.

(2) The true or estimated quantity of the several lands.

(3) The names and descriptions of the several proprietors and occupiers.

(4) A statement whether the lands were then cultivated as arable, meadow, pasture, wood or common, or in any other way whatsoever.[1]

(5) A reference by a number set against the description of the several lands or closes to a map or plan drawn on paper or parchment, in which the lands or closes should be similarly numbered.

(6) The amount charged on the several lands or closes of land.[2]

(7) To whom, and in what right, the amount was in each case payable.[3]

[1] 7 Will. 4 & 1 Vict. c. 69, s. 5 provided that it should be unnecessary in any case of voluntary apportionment to state in what manner the various lands were cultivated, or the amount charged on the several closes of each landowner, if three-fourths of the landowners interested in the apportionment by writing under their hands should request the commissioners that such statements might be omitted.

[2] See last note; also sect. 21 of 3 & 4 Vict. c. 15 provided that this might be omitted upon the request of the majority in value of the landowners, if valuers had not been appointed prior to the passing of that Act. This apparently applied to voluntary and compulsory apportionments.

[3] Sect. 24 of 2 & 3 Vict. c. 62 provided that in certain cases of difficulty the award might be made to the tithe owner by general description.

(8) The whole sum agreed or awarded to be paid by way of rent-charge for the parish.[1]

(9) The number of bushels of wheat, barley and oats, ascertained to be the equivalent for such whole sum;[1] *i. e.*, the number of bushels of wheat, barley and oats the sum would have purchased at the prices ascertained to have been the average prices for the seven years preceding the passing of the Act 6 & 7 Will. 4, c. 71, which prices are fixed by 7 Will. 4 & 1 Vict. c. 69, s. 7 at 7*s.* 1½*d.* per bushel for wheat, 3*s.* 11½*d.* for barley, and 2*s.* 9*d.* for oats, provided one-third of the sum were expended in each of the three kinds of corn.

This draft, signed by the person who had made it, was sent, together with the map or plan, to the office of the commissioners, or some district commissioner, together with proofs that every proceeding incident to the making of the draft had been duly performed. The commissioners then caused a copy of the draft to be deposited in the parish for inspection, and appointed a meeting to hear and determine objections.[2] Having heard and determined these, if any, and amended the draft (if necessary), the commissioners, or assistant commissioner, caused the draft to be engrossed on parch-

[1] Provisions of sect. 4 of 7 Will. 4 & 1 Vict. c. 69, superseding in this respect sect. 57 of the principal Act.

[2] In case one landowner was seised of all the lands, not glebe, of the parish, these formalities were unnecessary if the apportionment was made in consequence of a parochial agreement (7 Will. 4 & 1 Vict. c. 69, s. 6).

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ment, and annexed to it the map or plan;[1] and then having signed the instrument of apportionment, and the map or plan, sent them both to the office of the commissioners, who, if they approved the apportionment, confirmed the instrument under their hands and seal, adding the date of the confirmation. If, in any case of voluntary or compulsory apportionment, or of an agreement for giving land in lieu of tithes,[2] the commissioners should not be satisfied of the accuracy of the map or plan, they were empowered, by sect. 1 of 7 Will. 4 & 1 Vict. c. 69, and sect. 22 of 2 & 3 Vict. c. 62, to refrain from signing or sealing it, in which case they were to certify on it that it was the map or plan referred to in the instrument of apportionment or agreement.[3]

Of this confirmed instrument of apportionment, and of every confirmed agreement for giving land in lieu of tithes or rent-charge, two copies are required by sect. 64 of the principal Act to be made and sealed with the seal of the commissioners.[3] One of these is to be deposited with the registrar of the diocese in which the parish is situated, to be kept among the records of the registry; the other, with the incumbent and church— or chapel—wardens of the parish, or some other fit

[1] The commissioners are empowered by sect. 26 of 23 & 24 Vict. c. 93 to order maps to be detached from instruments of apportionment where, from their size or any other cause, they deem it expedient.

[2] See Chap. IV. pp. 63 *et seq.*

[3] It appears by implication from this section that the commissioners were to sign and seal the map or plan, as well as the instrument of apportionment (see, too, p. 41).

persons approved by the commissioners, to be kept with the public books and papers of the parish; but if such custody is alleged to be inconvenient to the majority of the persons interested, or otherwise inconvenient or unsafe, power is given by sect. 17 of 9 & 10 Vict. c. 73 to any person interested in the lands or rent-charge to apply to quarter sessions for an order for the deposit of the copy in a more convenient or secure custody or place. Of this application fourteen days' notice in writing must be given to the persons in whose custody the copy is deposited at the time of the application. The Court of Quarter Sessions may, upon hearing the application, order the copy to be removed from the custody objected to, and deposited in such custody as the Court may think fit. The costs of the application and of any opposition to it are in the discretion of the Court. To this copy all persons interested may have access for the purpose of inspection on payment of 2*s.* 6*d.*, and are entitled to be furnished with copies of or extracts from it, upon paying for them at the rate of 3*d.* for every folio of seventy-two words. Again, 5 & 6 Vict. c. 54, s. 13 empowered boards of guardians of parishes and unions, with the consent of the poor law commissioners, to pay out of the rates the cost of making the map or plan, with a view to its use by them in estimating the net annual value of property in respect of which rates might be assessed for the relief of the poor. The commissioners having certified in writing that such cost has been paid, the overseers of the parish, or any officer of the board of guardians, or any person autho-

rized in writing by the overseers or board, is entitled to inspect, take copies of, and make extracts from the map or plan free of charge.

If at any time any sealed copy of a confirmed instrument of apportionment is in the possession of any person who is not legally entitled to it, any two justices of the peace, in whose jurisdiction the lands mentioned in the instrument are situated, are empowered by sect. 28 of 23 & 24 Vict. c. 93, upon the application of any person interested in the lands or rent-charge, and upon fourteen days' notice in writing of the application[1] to the person or persons in whose custody the copy is at the time of the application, to hear and determine it. They may then order the copy to be removed from the custody in which it is, and to be deposited in such custody as they think fit; they may also impose a fine not exceeding twenty shillings for each day that the copy is retained contrary to the terms of their order, and the costs of the application and the fine and any opposition to it are in their discretion.

Finally, the commissioners are empowered by sect. 27 of 23 & 24 Vict. c. 93 to recopy or restore any instrument of apportionment, or any portion thereof, which may have become damaged or defaced, certifying such copy or restoration under their hands and seal.

No agreement, award, or apportionment, having been

[1] The application of which notice is to be given must be an application which has already been made, *i. e.*, the application must first be made to the justices, and then fourteen days' notice of it given before it can be heard and determined (*Reg.* v. *Sayers*, 3 L. T. N. S. 405).

confirmed as above provided, or purporting to be so confirmed, can be impeached by reason of any mistake or informality in itself, or in any proceeding relating thereto, but is valid in all respects, subject to any powers given to the commissioners to alter it (sect. 64 of the principal Act, and 10 & 11 Vict. c. 104, s. 2);[1] and by sect. 34 of 23 & 24 Vict. c. 93, where land has been made chargeable with rent-charge in lieu of tithes for more than one parish, they are empowered to determine in respect of which parish the rent-charge should have been charged, and to order it to be paid in respect of that parish only.

Every recital or statement in an apportionment or agreement for giving land, or in any sealed copy thereof, and any map or plan annexed to such apportionment or agreement or copy, if signed and sealed by the commissioners, is made by sect. 64 of the principal Act satisfactory evidence of the matters therein recited or stated, or of the accuracy of the map or plan;[2] but sect. 1 of 7 Will. 4 & 1 Vict. c. 69 provides that in

[1] See Chap. III. pp. 54 *et seq.* In spite of this provision it was held, in *Clarke* v. *Yonge* (5 Beav. 523), that questions between rival claimants to tithe rent-charge where, by mistake, the title of one claimant had not been brought before the commissioners at the time of commutation, could still be raised in a court of law (see, too, *Morris* v. *Duke of Norfolk*, 9 Sim. 493).

[2] The section only uses the word "plan," but it is evident from the context that "map" is also intended.

The map is not receivable in evidence as showing the boundary of land in a case of disputed title (*Wilberforce* v. *Hearfield*, 5 Ch. D. 709). See, however, *Giffard* v. *Williams* (38 L. J. Ch. 597), where a properly authenticated tithe commutation map was received in evidence to prove plaintiff's title in a partition action.

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no case where the map or plan, as well as the instrument, is not signed and sealed by the commissioners,[1] shall any recital of the quantity or admeasurement of lands, or any map or plan annexed to any such instrument, or any copy thereof, be deemed evidence of the quantity of land referred to in it, or of the accuracy of the map or plan.

After the confirmation of the instrument of apportionment, the lands of the parish comprised in it became discharged from the payment of all tithes, and, in lieu thereof, a sum of money in the nature of a rent-charge issuing out of the lands is payable. This sum is payable by equal half-yearly payments on the 1st of January and 1st of July (sect. 67 of the principal Act), but it might, by an award or agreement, be made payable on 1st April and 1st October instead (sect. 11 of 7 Will. 4 & 1 Vict. c. 69, sect. 10 of 2 & 3 Vict. c. 62, sect. 13 of 3 & 4 Vict. c. 15, and sect. 3 of 5 & 6 Vict. c. 54). The amount of the sum payable in any given year is ascertained by taking the number of bushels of wheat, barley, and oats fixed in the instrument of apportionment,[2] and then seeing how much money such number of bushels of each kind would fetch at the average prices of the past seven years, as advertised in the *London Gazette* in January of each year pursuant to sect. 10 of 45 & 46 Vict. c. 37.[3] The sum thus ascertained is the amount payable for that year.

[1] *E. g.*, in the case of their not being satisfied as to its accuracy, see p. 38.

[2] See p. 37.

[3] Repealing sect. 56 of the principal Act.

The provisions of the statutes 4 & 5 Will. 4, c. 22, and 33 & 34 Vict. c. 35, as to the apportionment of periodical payments, apply to all rent-charges for which tithes have been commuted. (Sect. 5 of the last-mentioned Act, and sect. 86 of the principal Act.)

Lastly, where any lands were exempt from the payment of tithes whilst in the occupation of the owner, by reason of being glebe, or parcel of the possessions of some privileged order, or Crown lands, the like exemption extends to the rent-charge. (Sect. 71 of the principal Act, and 2 & 3 Vict. c. 62, s. 12.)

SECT. 4.—*Commutation and Apportionment in certain exceptional Cases.*

1. Under sects. 38 and 39 of the principal Act the commissioners had power to reserve for separate adjudication any case where they might suspect fraud or collusion, or in which, by reason of the length of time which had elapsed since the making of any composition then in force, or by reason of the peculiar interest in the lands or tithes of either of the parties to any composition, or by reason of any other special circumstance, they considered a separate adjudication desirable. Such special adjudication having been made with certain formalities required by the Act, the award was to be published and confirmed as in the case of an ordinary award.[1]

[1] See p. 33.

2. Under sect. 58 of the principal Act the valuers or commissioners, or assistant commissioner, as the case might be, had power to make a special apportionment at any time before the confirmation of the apportionment, by apportioning, at the request of any landowner, the whole rent-charge intended to be charged upon any lands of such landowner held under the same title and for the same estate in the same parish, specially upon the several closes or portions of such lands, or according to an acreable rate or rates upon lands of different quality, in such manner and proportion, and to the exclusion of such of them, as the landowner, with the consent of the person entitled to the rent-charge, might direct; but no close of land was to be charged with any rent-charge or share of rent-charge on account of the tithes of any other lands, unless the value of the lands to be charged should be at least three times the value of the whole rent-charge upon them.[1]

3. Under sect. 9 of 7 Will. 4 & 1 Vict. c. 69, in all cases where the same person or body was not entitled to all the tithes of the parish, and the lands out of which each such person or body was entitled to tithes were not clearly defined, or where the lands lay dis-

[1] The section runs, "that no close of land shall be charged with any rent-charge on account of the tithes of any other lands, unless the value of such lands shall be at least three times the value of the whole rent-charge upon such lands." If taken in its strictly grammatical sense this would mean that the value of the lands in respect of which the rent-charge is to be charged upon any close of land must be three times the value of the rent-charge upon those lands, which would be meaningless and absurd. The meaning adopted in the text seems to be the more correct and reasonable one.

persedly throughout the parish, power was given to the land and tithe owners by agreement, with the consent of the diocesan and patron of the living when any tithes payable to a spiritual person in right of his benefice were in question, or in default of such agreement to the commissioners by award, as might seem to them convenient (but so that no land should be charged with more than its due proportion), to fix and apportion the rent-charge payable to the several persons or bodies upon particular lands. Every such agreement or determination of the commissioners, when confirmed by them, became conclusive against all persons.

4. Under sects. 11 and 12 of 2 & 3 Vict. c. 62, where lands were partially exempt from payment of tithes, or rent-charge in lieu thereof, by reason of having been parcel of the possessions of any privileged order[1] or Crown lands, and under sect. 14 of 3 & 4 Vict. c. 15, where by reason of lands being partially exempted from the payment of tithes by custom or otherwise, or by being subject to a shifting or leaping modus, or other customary payment, or payment rendered[2] due only on certain contingencies, a contingent rent-charge had been, or might be fixed in respect of such lands, the owners

[1] It is worthy of notice that church or glebe lands are omitted here, though they are partially exempt in the same way.

[2] The section runs, "where by reason of lands being partially exempted from the payment of tithes . . . by being subject to a shifting or leaping modus, or other customary payment, or rendered due only on certain contingencies, &c." . . . This is ungrammatical, there being no substantive to which "rendered due" can refer. It is clear that some such word as payment must be understood.

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of the lands and of the tithes or rent-charge might, by the parochial agreement, or by a supplemental agreement where a parochial agreement or any award had been previously confirmed, agree upon, or the commissioners might, with the consent of the owners of the lands and tithes, at any time before the confirmation of the apportionment of any rent-charge, by an award or supplemental award[1] determine a fixed and continuing rent-charge instead of the contingent tithes or rent-charge. Upon the confirmation of the agreement or award the lands are discharged from the contingent tithes or rent-charge. Cases of prescription relating to woodlands are expressly excepted by sect. 14 of 3 & 4 Vict. c. 15 from its operation.

5. Sect. 13 of 2 & 3 Vict. c. 62, extended by sect. 15 of 3 & 4 Vict. c. 15, provided, in the case of lammas lands[2] and lands subject to a personal right of common, or right of common in gross vested in certain persons by reason of inhabitancy, or occupation, in the parish where such lands lay, if the right of common was not annexed or appurtenant to or arising out of any lands on which any rent-charge could be fixed, that at any time before the confirmation of the apportionment the parties interested in the lands or commons and the tithes thereof might, by the parochial agreement, or by

[1] The power to make a supplemental award does not appear in sect. 11 of 2 & 3 Vict. c. 62.

[2] Lammas lands are lands held in severalty during a portion only of the year, *i. e.*, from Candlemas to Lammas (February to August), and during the remainder open to all persons having common rights of pasturage, &c., over them.

a supplemental agreement subsequent to a parochial agreement or to an award, or the commissioners might, by their award, or by a supplemental award subsequent to their award or to a parochial agreement,[1] fix a rent-charge instead of the tithes of the lammas lands or commons to be paid during their separate occupation by the separate occupiers. The agreement or award must declare a sum or rate per head to be paid for each head of cattle or stock turned on to the lammas lands or commons. Every such sum or rate is payable by the owner of the cattle or stock upon its being turned on the lands or commons, and any arrears may be recovered by distress and by impounding any cattle, goods, or chattels belonging to the person in respect of whose cattle or stock the sum or rate is in arrear, in the same way as if they were arrears of rent.

Again, by sect. 18 of 23 & 24 Vict. c. 93 the commissioners are empowered, by supplemental award and apportionment, upon the written application of any person entitled to receive, or any person liable to pay it, to convert into a gross rent-charge any sum or rate per head, for which tithes have been commuted, payable for each head of cattle or stock turned upon land which is subject to common rights or held or enjoyed in common during the whole year.

6. Under sect. 16 of 9 & 10 Vict. c. 73, where after any confirmed agreement or award settling the rent-

[1] Where the commissioners intended to proceed by a supplemental award subsequent to a parochial agreement, they were to give the same notice as in the case of an original award (3 & 4 Vict. c. 15, s. 16).

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charge in lieu of the tithes of any parish, but prior to the confirmation of the apportionment, it appeared to the commissioners that, by reason of any doubt which had then arisen or existed in respect of any actual or supposed exemption from tithes, modus, composition real, or prescriptive or customary payment, or by reason of any other question or doubt applicable to a part only of the lands of the parish, or by reason of any question or doubt touching the boundaries of the parish, it could not be immediately ascertained whether the agreement or award might require rectification in respect of such matters, the commissioners had power to declare by way of supplement to the agreement or award that the lands to which the doubt or question applied should be considered a separate district for commutation, and that the residue of the parish should remain subject to the agreement or original award, with any variations they might direct in the award by way of supplement. Every such award by way of supplement is subject to the same provisions as separate awards under statute 2 & 3 Vict. c. 62.

7. Sect. 19 of 23 & 24 Vict. c. 93 empowers the commissioners in any case where a gross rent-charge has been made payable in respect of a gated or stinted pasture,[1] and the gates or stints[1] are rated to the relief of the poor, upon the written application of the person

[1] A gate or stint is the right of each person who has a share in a gated or stinted pasture, *i. e.*, grazing land on a moor, down or waste, which produces no crop, and which is open to each such person for the pasturage of a stinted or limited number of cattle (see Elton on Commons).

entitled to the rent-charge, or of any owner of a gate or stint, by the instrument of apportionment, or by a supplemental award and apportionment, to apportion the gross rent-charge *pro ratâ* upon the gates or stints.

The owner of the gross rent-charge so apportioned has the same powers for the recovery of any arrears by distress on the goods and chattels of the person rated to the relief of the poor in respect of the gates or stints, the rent-charge upon which is in arrear, as an owner of rent-charge in lieu of tithes has for the recovery of arrears of rent-charge;[1] but in this case the power of distress may be exercised upon the goods and chattels wherever found.

SECT. 5.—*Expenses of Commutation and Apportionment.*

The expenses considered in this section include all allowances to and expenses of land surveyors and tithe valuers, and all other expenses incident to the making of any award or apportionment, or of the annexed map or plan, or of any copies of them. They do not include the salary or allowance to any commissioner or assistant commissioner, which are paid by the Treasury (sects. 7 and 8 of the principal Act), nor any expenses which the commissioners or an assistant commissioner or the Court or an arbitrator may be authorized to order, and may have

[1] See pp. 90 *et seq.* The remedy in this case is untouched by the Tithe Act, 1891.

ordered to be otherwise paid (sects. 74 and 75 of the principal Act), nor the cost of the employment of a solicitor by the landowners of a parish to conduct proceedings under the Act.[1]

The expenses under consideration may fall upon different persons in the cases of an award and an apportionment.

1. In the case of an award, sect. 74 of the principal Act, as amended by sect. 23 of 2 & 3 Vict. c. 62, provides that they shall be borne by the persons interested[2] in the lands and tithes comprised in the award in such proportion, within such time, and in such manner as the commissioners may direct.

2. In the case of an apportionment, sect. 75 of the principal Act, as amended by sect. 23 of 2 & 3 Vict. c. 62, provides that they shall be borne by the persons interested[2] in the lands included in the apportionment in rateable proportion to the rent-charge charged on the lands by the apportionment.

The commissioners having decided the amount of expenses to be borne by each of the several land and tithe owners, the following powers are given to owners of limited estates in lands or tithes to charge the amount to be borne by them on the land or rent-charge.

1. Under sect. 77 of the principal Act every owner

[1] *Hinchliffe* v. *Armistead*, 9 M. & W. 155.

[2] Under the principal Act the power could only be exercised among the land and tithe "owners." This was found to work injustice in certain cases of sub-leasing, and, therefore, the words were extended to cover all persons interested in any way in the lands or tithes.

of an estate in lands[1] or tithes which is less than an immediate estate of fee simple or fee tail, or which is settled upon any uses or trusts, may, with the consent of the commissioners, and in such manner as they may direct, charge the whole or any part of the expenses to be borne by him, with interest at four per cent., on the lands or rent-charge; provided that the charge upon the lands or rent-charge is lessened every year by one-twentieth of the whole original charge.

This power is extended by sect. 16 of 2 & 3 Vict. c. 62 to the case of expenses payable by any corporate body or person, master or fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other having any spiritual or ecclesiastical living, whether seised in fee or for a limited estate; and sect. 23 of 3 & 4 Vict. c. 15 provides that the power may be exercised by any owner of lands in respect of which tithes are payable to him.

2. Under sect. 17 of 2 & 3 Vict. c. 62 any corporation aggregate, or any collegiate body, may, with the consent of the commissioners under their hands and seal, charge the amount on any other lands[1] held by them to the

[1] By sect. 23 of 3 & 4 Vict. c. 15 the word "lands" includes any income or sum receivable by or accruing to any such owner from redeemed land tax, or from fines or other sums of money payable on the renewal of any term of estate in lands, tithes, or rent-charge held of or by him to the same uses and upon the same trusts as the lands, tithes, or rent-charge in respect of which the expenses are incurred.

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same uses or on the same trusts as the lands in respect of which the expenses were incurred.

3. Every ecclesiastical beneficed person[1] may, under sect. 78 of the principal Act, advance or borrow the whole or any part of the expenses to be borne by him, and may charge or assign the rent-charge as a security for their repayment for twenty years, or until the sum advanced or borrowed, with interest at four per cent., and the expenses of the charge or assignment, are paid off. The sum to be advanced or borrowed must be ascertained by a commissioner or assistant commissioner, and certified under his hand as the amount of the expenses properly incurred by the ecclesiastical beneficed person. Each successive incumbent must pay the interest as it becomes due, or within one calendar month afterwards, and also an instalment of five per cent., or one twentieth, on the principal sum advanced or borrowed. Upon each payment on account of principal the interest is proportionately reduced.

In default of payment by the incumbent, the ordinary may sequester the profits of the benefice until the payment is made.

Since the provisions of 2 & 3 Vict. c. 62, s. 16, above referred to,[2] it is doubtful how far the power given by this section is necessary, but it differs in that it allows an assignment of the rent-charge.

[1] In case any spiritual person dies or vacates his benefice before exercising the power of borrowing and charging his rent-charge, the commissioners, with the consent of the ordinary, are empowered to do so by 5 & 6 Vict. c. 54, s. 8.

[2] See last page.

In default of payment by the person liable, the expenses can be recovered either—

1. In the case of expenses payable by owners of lands in the same way as rent-charge in arrear[1] (2 & 3 Vict. c. 62, s. 18); or
2. By a distress warrant issued by two justices of the peace in whose jurisdiction the lands concerned are situated, upon production to them of a certificate, signed by a commissioner or assistant commissioner, certifying the amount to be paid by the person against whom the distress warrant is to issue. The certificate can be granted by any commissioner or assistant commissioner when any difference arises as to the expenses, or the share of them, to be paid by any person, and seems to be an essential condition precedent to the issuing of the distress warrant.

Any occupier, whose lands or goods are liable to distress in respect of any expenses chargeable upon his landlord or lessor, is entitled to recover any amount he may pay, with interest at four per cent., and may deduct it from any rent or renewal fines payable to his landlord or lessor. The landlord or lessor, if his estate in the lands is less than an estate of fee simple or fee tail, or is subject by a settlement to any uses or trusts, may charge the amount and interest upon the estate as above pointed out with reference to expenses.[2]

[1] *I. e.*, under the Tithe Act, 1891, see pp. 97 *et seq.*

[2] See pp. 50—52.

CHAPTER III.

ALTERATION OF APPORTIONMENTS.

THE apportionment, though final when made by the commissioners, may, under certain circumstances, be altered from time to time. It is proposed in this Chapter to state what those circumstances are.

1. If the owner of any lands desires it, the Commissioners of Land-tax for the county or place where the land is situate, or any three of them, with the consent of two magistrates in whose jurisdiction it is, or the commissioners without any such consent, may, under sect. 72 of the principal Act, and sects. 14 and 15 of 5 & 6 Vict. c. 54, alter the apportionment in such manner as the landowner directs. The altered apportionment must be made by an instrument in writing under the hands and seals, in the first case, of the Land-tax Commissioners, the landlord and the magistrates; and in the second case, of the commissioners.

Three counterparts are to be made, and of these two are to be sent—one to the registrar of the diocese, and the other to the other person who has the custody of the copy of the original instrument of apportionment. These two counterparts are to be annexed as amendments to the copies of the original instruments. The third counterpart is to be sent to or retained by the

commissioners. All the expenses of the alteration are to be borne by the landowner.

The alteration must be made subject to the provisions contained in sect. 58 of the principal Act that no close of land is to be charged with any rent-charge, or share of rent-charge, on account of the rent-charge of any other lands, unless the value of the lands so to be charged is three times the value of the whole rent-charge intended to be charged upon it, and to that contained in sect. 13 of 23 & 24 Vict. c. 93, that no land is to be charged with rent-charge payable to a different owner than the rent-charge previously charged on it without his consent. Again, sect. 14 of 5 & 6 Vict. c. 54, provides that no subdivision of any rent-charge so made shall be less than five shillings.

2. If at any time after the confirmation of any instrument of apportionment lands charged with one entire rent-charge have become vested in several owners, and any of these owners are desirous that the apportionment shall be altered, the Commissioners of Land-tax, or any three of them, with the consent of two magistrates (as in 1), or the commissioners, have power under sect. 14 of 5 & 6 Vict. c. 54, as amended by sect. 10 of 23 & 24 Vict. c. 93, to alter the apportionment in such manner and in such proportions as may seem just to them, but so that no division of any rent-charge shall be less than five shillings.[1]

[1] In *Ebsworth and Tidy's Contract* (42 Ch. D. 23), it was held that on a sale of a portion of land, subject with other land to a gross rent-charge (see p. 35), there is no obligation on the vendor, in the absence of a special agreement, to procure a fresh apportionment.

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In the event of all the landowners interested in the alteration not signifying their consent the commissioners must cause a draft to be prepared of the proposed altered apportionment, which must be deposited for inspection, as in the case of an original instrument of apportionment,[1] and must then cause notice of the deposit to be given in such manner as they may think fit, specifying a time, not less than twenty-one days, within which objections may be signified to them in writing. In case any objection is received they must appoint a time and place for hearing it.

Having determined the objections (if any), or if there is no objection received, the commissioners may confirm the altered apportionment, either with or without amendment.

It is to be noted that in this case the provision of sect. 58 of the principal Act does not apply as in 1, but that of sect. 13 of 23 & 24 Vict. c. 93 does.[2]

The alteration of the apportionment must be made, the counterparts deposited, and the expenses paid, as in 1.[3]

3. Where lands charged with rent-charges or portions of rent-charges under confirmed instruments of apportionment are inclosed, divided, allotted, or exchanged by agreement or award made under the powers of any general or local Act of Inclosure or otherwise, so that the apportionment appears to the commissioners

[1] See p. 37.
[2] See last page.
[3] See pp. 54, 55.

to be inconvenient with reference to the altered distribution of the lands, they are empowered by sect. 13 of 9 & 10 Vict. c. 73, upon the application of the owners of the lands, or a majority in number and value of them, or of any person or persons entitled to the rent-charges or any portions of them, to make or confirm an altered instrument of apportionment, so that the rent-charges or portions of rent-charges originally charged on the several portions of land, which have been taken or allotted away from the former owners on the inclosure, division, allotment, or exchange, may be charged on the lands allotted to or received by the former owners by way of substitution or compensation. This altered apportionment is to be confirmed under the hands and seal of the commissioners, and then becomes a valid amendment of the original apportionment.

The expenses of and incident to this alteration are to be borne by the owners of the lands affected by it, and are recoverable in the same way as expenses of and incident to an original apportionment.[1]

4. Sect. 15 of 9 & 10 Vict. c. 73 provides that where, after the confirmation of any apportionment, it appears that some tithes included in the total tithes, in respect of which the rent-charge has been agreed or awarded to be paid, were—

(1) not held by the person to whom the rent-charge was agreed or awarded to be paid; or

(2) not held by him in the same right and for the same estate; or

[1] See pp. 50—53.

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(3) not subject, after the determination of his estate, to the same limitations or estates;

the commissioners may either (*a*) in pursuance of a decree or direction of the Court, or (*b*) on the application in writing of the parties, who, had there been no commutation, would have been the owners of all the tithes included in the total amount, make or confirm a supplemental award or apportionment of the rent-charge, in such manner that separate rent-charges or portions of rent-charges may be made payable to the parties who would have been owners of the tithes; and they may, if they please, award to be paid to one of the respective owners, or to the owner in lieu of one of his respective rights, the whole of any rent-charges payable under the original instrument of apportionment out of specific lands, instead of dividing each rent-charge among the different owners. This supplemental award and apportionment, when confirmed under the hands and seal of the commissioners, takes effect from the next half-yearly day of payment.

5. If any lands have been improperly included or charged with rent-charge in any confirmed instrument of apportionment, sect. 3 of 10 & 11 Vict. c. 104 empowers the commissioners to correct such apportionment and the deposited copies thereof, either (1) by excluding the lands improperly charged from the apportionment, and redistributing[1] any rent-charge imposed on those lands upon the lands properly liable to

[1] Subject to the provision of 23 & 24 Vict. c. 93, s. 13, see p. 55.

the payment thereof, or (2) by sanctioning the redemption of the rent-charge.[1]

All the incidental costs and expenses of this correction are to be borne by such persons, and in such proportions, as the commissioners may direct, and are recoverable in the same manner as expenses of and incident to original instruments of apportionment.[2]

The person or persons having the custody of any instrument of apportionment are bound, by sect. 4, upon the application of the commissioners, to deliver to them the copy for the purpose of correction.

6. Sect. 11 of 23 & 24 Vict. c. 93 enables the commissioners, with the consent of the owner or owners of any lands charged with rent-charge under any instrument of apportionment, whether payable to one or more owners of rent-charge, and without regard to the mode of its apportionment, to re-apportion and re-distribute, subject to the provision of sect. 13,[3] the rent-charge by an altered apportionment over and amongst the same lands, or any part of them, and to the exclusion of any of them; but no rent-charge may be charged upon any land to the exclusion of other land of the same owner, unless both lands are settled to the same uses, or the land so charged is held for an estate in fee simple or tail in possession.

There seems here to be no limit as to the value of the land to be charged, such as that in sect. 58 of the principal Act.[3]

7. By sect. 15 of 23 & 24 Vict. c. 93 the commis-

[1] See p. 82. [2] See pp. 50—53. [3] See p. 55.

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sioners are given power, whenever any instrument of apportionment appears to be so altered by successive instruments of altered apportionment, as to render the collection of the rent-charge unreasonably inconvenient or difficult,[1] upon the application[2] of the person or persons entitled to the rent-charge, or any part of it, without any notice, or any consent of any of the owners of the lands, to make a further instrument of altered apportionment as regards the whole or any portion of the lands charged, provided that they make no alteration in the amount charged on the lands of any particular owner. This altered apportionment becomes an amendment of and substitution for the original and altered apportionments, so far as they are affected by it.

8. Sect. 16 of 23 & 24 Vict. c. 93 empowers the commissioners when, in consequence of any new boundaries of parishes being set out on any inclosure or otherwise, they consider the apportionment of the rent-charge in those parishes rendered inconvenient, either (1) to make and confirm an altered instrument of apportionment adapted to the altered circumstances; or (2) to declare by an order under their hands and seal the lands affected by the alteration of boundaries, with or without any other lands comprised in the enclosure, and whether the lands are situate in one or more parishes, to be a "separate district;" and may make and confirm an altered instrument of apportionment

[1] The existence of "unreasonable inconvenience and difficulty" is apparently a question for the commissioners.

[2] Apparently the application need not necessarily be a written one.

adapted to the altered distribution of the lands, with reference both to the landowners and rent-charge owners in the district; and may fix and apportion the amount of rent-charge payable to each of the rent-charge owners in the district upon such particular lands as may seem convenient to them; provided that no lands are charged with more than their due proportion of rent-charge, or are charged with rent-charge payable to a different owner than the rent-charge previously charged on them was payable without his consent. In this second case the altered apportionment, when confirmed, is to be annexed to the original apportionment for that parish from which the greatest amount of rent-charge is payable under the altered apportionment, and counterparts are to be annexed to the original apportionment for each of the other parishes in the "separate district," and copies are to be deposited in respect of each parish as in 1.[1]

9. Where, through the removal or alteration of fences between land subject to and land free from tithe or rent-charge, it is impossible or difficult to distinguish the limits of the land charged, and the lands are held for an estate of fee simple or tail, or are settled to the same uses, sect. 12 of 23 & 24 Vict. c. 93 empowers the commissioners, with the consent of the owner of the lands, to include the whole of the lands in any instrument of altered apportionment,[2] and to apportion the

[1] See p. 54.

[2] It is questionable if this section in terms authorizes an altered apportionment being expressly made, and whether it was not intended merely to apply to a case where an altered apportionment was otherwise being made.

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rent-charge on the land previously free, or any part of it.

10. Under sect. 25 of 23 & 24 Vict. c. 93, where lands in respect to the cattle or stock upon which a sum or rate per head is payable are inclosed, divided, allotted, or exchanged, under the powers of any general or local Act of inclosure or otherwise, the commissioners may, by an altered apportionment, adapted to the altered distribution of the lands, charge a rent-charge, equivalent to the amount of the sum or rate per head previously payable, upon the lands allotted, in lieu of the rights in respect of which the sum or rate per head was payable.

CHAPTER IV.

DISCHARGE OF LAND FROM LIABILITY TO TITHES OR TITHE RENT-CHARGE BY GIVING LAND IN LIEU THEREOF.

THERE are six ways in which land may be discharged from tithes or tithe rent-charge by the giving of land.

1. Under sects. 29 and 30 of the principal Act a parochial agreement, made in similar manner and form to a parochial agreement for commutation, may give to any ecclesiastical owner of any tithes, or rent-charge in lieu of tithes, in right of any spiritual benefice or dignity, any quantity of land not exceeding twenty acres by way of commutation for the whole or any portion of the tithes or rent-charge. Every such agreement must fulfil the following conditions:—

(1) It must be made in the form and contain the particulars directed by the commissioners;

(2) It must specify the land out of which the tithes or rent-charge, the subject of the agreement, issue;

(3) It must state the quantity, state of culture, and annual value of the land proposed to be given;

(4) The same consents to and confirmation of the

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agreement are necessary as in the case of an agreement for commutation;[1]

(5) The land given must not be leasehold, or of copyhold or customary tenure if subject to any arbitrary fine or heriot, and must be free from incumbrances, except leases at improved rent, and land tax or other usual outgoings.

This agreement having been entered into as described, the commissioners must satisfy themselves of the title to the land proposed to be given in lieu of tithes or rent-charge, that the same[2] are of the description and value set forth in the agreement, and that the agreement itself conforms to the provisions of the statute.

The commissioners, being satisfied on these points, confirm the agreement, which then operates as a conveyance of the land, vesting it in the owner of the tithes or rent-charge upon the same trusts and uses as the tithes or rent-charge for which it is given are vested and held.[3]

After the 1st January following the confirmation of the agreement, the lands of the parish are absolutely discharged from the payment of the tithes or rent-charge for which the land is agreed to be given (sect. 68).

[1] See p. 30.

[2] The words "the same" probably refer to both the land and the tithe or rent-charge; being followed by the word "are" they cannot refer to the land alone.

[3] There does not seem to be in these sections any limitation of the time when such agreement may be made; however, by 2 & 3 Vict. c. 62, s. 20, it is expressly provided that this power shall be exercisable as well after as before the confirmation of the instrument of apportionment.

2. By sect. 62 of the same Act, and 2 & 3 Vict. c. 62, s. 19, the owner of any land upon which a rent-charge has been apportioned may, at any time prior or subsequent to the confirmation of the instrument of apportionment, agree with any ecclesiastical person, who is the owner of the tithes charged on his lands in right of any spiritual benefice or dignity, for giving land instead of the rent-charge on his lands.

Every such agreement must fulfil all the same conditions as a parochial agreement for giving land,[1] and must be made under the hands and seals of the land and tithe owners. No such tithe owner may take or hold more than twenty acres of land in the same parish under any agreement or agreements,[2] and any amendment made subsequent to such agreement and prior to the confirmation of the apportionment, which alters the charge upon the lands referred to in any such agreement, annuls the agreement.

3. Under the provisions discussed under heads 1 and 2, the landowner, by giving land in lieu of vicarial tithe, would not free his land from rectorial tithe, and conversely, by giving his land in lieu of rectorial tithe he would not free it from vicarial, and so sect. 6 of 5 & 6 Vict. c. 54 provides a means by which he may get rid of both rectorial and vicarial tithe.

Under this section any tithe owner may, subject to the approval of the commissioners, and in the case of

[1] See last two pages.

[2] Quære if this includes parochial agreements.

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spiritual tithes, subject also to the consent of the patron and ordinary, and to the limitation of twenty acres, agree for the assignment to any other owner of tithes issuing out of the same lands of so much of his tithes arising within the same parish (or of the rent-charge agreed or awarded to be paid instead of such tithes) as may be equivalent to the tithes of such other tithe owner issuing out of the same lands (or of the rent-charge agreed or awarded to be paid in lieu thereof), for the purpose of enabling any landowner desirous of giving land instead of tithes to free his lands, or any part of them, from both rectorial and vicarial tithes, or rent-charges in lieu of tithes.

Every such agreement is to be carried into effect by an award, or supplemental award, of the commissioners, made in the same manner as ordinary awards, or supplemental awards.

4. 5 & 6 Vict. c. 54, s. 7, provides for the confirmation by the commissioners of agreements for giving land or money, or both, instead of tithes or glebe or commonable or other rights or easements, made prior to the passing of the principal Act.

5. By sect. 20 of 23 & 24 Vict. c. 93, in every case in which a gross rent-charge is charged upon any land subject to common rights, or held or enjoyed in common during the whole of the year (except where a gross rent-charge has been made payable in respect of the tithes of any gated or stinted pasture, such gates or stints being rated to the relief of the poor), the commissioners are, upon the application in writing of the person entitled

to the rent-charge, or of any person liable to pay it, or any part of it, to call a meeting of the owners of the land and the persons liable to pay the rent-charge, of which meeting they are to give twenty-one days' notice, and the majority in value of the persons present at this meeting may determine whether the rent-charge shall be commuted for an equivalent part of the land on which it is chargeable, or be redeemed for a sum equal to twenty-five times the amount of the rent-charge.[1]

If no determination is come to at the meeting, then the commissioners have power to commute the rent-charge for land, in which case they must define and set out the land to be given, and vest it in the owner of the rent-charge by an award.

6. In any case where land or money payments, or both, had been, prior to 1847, given instead of tithes or glebe or commonable or other rights or easements by virtue of any Act of Parliament, the provisions of which had not been fully carried out, or by virtue of any arrangement not of legal validity, the commissioners might, under 23 & 24 Vict. c. 93, s. 40, by an award confirm the tithe owner in the possession of the land or money, or both, and might confirm and render valid any such arrangement, awarding a rent-charge in addition, if it should seem fit to them; and subject to such confirmation and award might extinguish the right of the tithe owner to the perception of the tithes, or his title to the glebe, rights or easements, or to the receipt

[1] See pp. 80—82.

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of any rent-charge other than that (if any) awarded by them in addition to the land or money, or both.

Sect. 20 of 2 & 3 Vict. c. 62 provides that any land taken by any ecclesiastical tithe owner under any agreement for giving land instead of tithes or rent-charge, upon confirmation of the agreement shall vest absolutely in the tithe owner and his successors.

In every such case the commissioners must cause to be inserted in, or endorsed upon, the agreement the amount of the rent-charge instead of which the land is given and the land upon which it was chargeable.

Any person who would have been entitled to recover the land given by the agreement, or any rents and profits issuing out of it, has a right of action for damages against the party giving such land, or his executors or administrators.

Any damages recovered, and all costs and expenses incurred in recovering them, become payable out of the lands freed by the agreement.

All agreements and assurances made for the purpose of giving land to any ecclesiastical tithe owner and his successors are valid if made by any corporation, sole or aggregate, or any trustees or feoffees for charitable purposes (sect. 21), or by churchwardens and overseers, or trustees or feoffees of parish property or of property held by or vested in such trustees or feoffees for parochial or other uses or purposes in the nature of a parochial or public trust (sect. 17 of 3 & 4 Vict. c. 15).

CHAPTER V.

DISCHARGE OF LAND FROM LIABILITY TO TITHES OR TITHE RENT-CHARGE BY MERGER.

Owing to the nature of tithes, no merger of them could take place, even though the same person was the owner of an estate in fee simple in the tithes and in the land out of which they issued; but now by statutory provision, tithes, or the rent-charge for which they have been commuted, may be merged or extinguished by the following persons:—

1. Any person or persons seised, either alone or together, of an estate in fee simple or tail in possession, or who has the power of acquiring or disposing of the fee simple in possession of any tithes or rent-charge (sect. 71 of the principal Act, and sect. 1 of 1 & 2 Vict. c. 64).
2. Any person possessed of an estate for life in tithes, or rent-charge in lieu thereof, and in the land chargeable therewith, where both tithes or rent-charge and land are settled to the same uses (1 & 2 Vict. c. 64, s. 3).
3. Any person to whom glebe or other land, and the tithes or rent-charge thereof, belong in virtue of his benefice, or of any dignity, office or appointment (2 & 3 Vict. c. 62, s. 6).

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4. Any person entitled in equity who, if he were legally entitled, would be empowered to merge (9 & 10 Vict. c. 73, s. 19).

By 1 & 2 Vict. c. 64, s. 4, it is enacted that all provisions as to merger shall extend to copyholds;[1] and by 2 & 3 Vict. c. 62, s. 7, it is provided that in all cases of merger of tithes or rent-charge issuing out of any copyhold land, which is subject to an arbitrary fine, the commissioners may, on the application of the owner of the land, ascertain the annual value of the tithes or rent-charge, and cause to be endorsed on the deed, declaration, or other instrument effecting the merger, a certificate under their hands and seal setting forth such annual value. In every such case the parties entitled to the arbitrary fine must, in any future assessment of it, assess it as if the lands were still subject to the tithes or rent-charge of which the annual value is indorsed. Proof thereof may be given by production of the original deed, declaration or instrument of merger, with the certificate indorsed thereon, or by a duplicate or office copy thereof.

Merger is effected by a deed or declaration under the hand and seal of the person or persons entitled to merge, made in a form approved by the commissioners, and confirmed under their seal, conveying, appointing, or otherwise disposing of the tithes or rent-charge, so that they may be absolutely merged and extinguished in the freehold and inheritance of the lands charged therewith.

[1] By 5 & 6 Vict. c. 54, s. 20, copyhold includes land held under any customary tenure or any other tenure liable to any arbitrary fine.

This deed or declaration is not subject to stamp duty (1 & 2 Vict. c. 64, s. 2).

Sect. 1 of 1 & 2 Vict. c. 64 provides that all such deeds and declarations shall be valid, though not made in the manner or with the formalities and requisites which would otherwise have been essential; and sect. 19 of 9 & 10 Vict. c. 73 confirms all instruments, purporting to merge tithes or rent-charge, previously made with the consent of the commissioners, subject, however, to any charge, incumbrance, or liability.[1]

Upon merger of any tithes or rent-charge the lands in which they are merged become subject to any charge, incumbrance or liability which previously to the merger existed on such tithes or rent-charge, but only to the extent of the value of such tithes or rent-charge.

All such charges, incumbrances, and liabilities have priority over any charge or incumbrance affecting the land at the time of the merger. The lands and the owner thereof become liable to the same remedies for the recovery of any payment and the performance of any duty in respect of such charge, incumbrance or liability, or in respect of any penalty or damages for non-payment or non-performance thereof respectively, as the merged tithes, or rent-charge, or the owner thereof, would have been but for the merger.

By sect. 2 of 2 & 3 Vict. c. 62 any person entitled to merge tithes or rent-charge may, with the consent of

[1] The section covers the case of a merger purported to be effected by a person having no interest whatever in the tithes purported to be merged (*Walker* v. *Bentley*, 9 Hare, 629).

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the commissioners under their hands and seal, and of the person to whom the land belongs, either by the deed, instrument, or declaration effecting the merger, or by some separate deed, instrument, or declaration, made in a form approved by the commissioners, specially apportion the whole or any part of any charge, incumbrance, or liability affecting the merged tithes or rent-charge, upon the lands in which they are merged, or any part thereof, or on any other lands belonging to the same person and held under the same title and for the same estate in the same parish, or upon the several closes or portions of such lands, or according to an acreable rate or rates upon lands of different quality. No land, however, may be exclusively charged unless its value is, in the opinion of the commissioners, at least three times the value of the amount of the charge, incumbrance, or liability intended to be charged on it, over and above any other charges and incumbrances which may affect it.

Lastly, sect. 18 of 9 & 10 Vict. c. 73 enables tithes to be merged after the agreement or award of a rent-charge, but before its apportionment; and, in the case of a merger extending only to a portion of the lands which would have been chargeable with the rent-charge, provides for the apportionment of the rent-charge among the other lands to the extent to which they would have been chargeable had there been no merger, and for the payment by the owner of the lands to which the merger extends of such portion of the expenses as the commissioners may under the special circumstances order, instead of his rateable proportion only.

CHAPTER VI.

REDEMPTION OF TITHES OR TITHE RENT-CHARGE.

VARIOUS powers of redemption, and various modes of exercising those powers, are conferred by the statutes.

The mode in which they vary is determined sometimes by the value of the tithe or rent-charge to be redeemed, and sometimes by other considerations; it will, therefore, be convenient to consider them under separate heads.

1. Where the amount of rent-charge agreed or awarded to be paid instead of the tithes of any parish does not exceed 15*l.*, and the rent-charge has not been apportioned.

The provisions for redemption in this case, owing to the fact that the commutation of all tithes throughout England and Wales and the apportionment of the equivalent rent-charge are practically complete, has become obsolete, and does not require to be further considered. Anyone interested can find the provisions in sects. 1 and 2 of 9 & 10 Vict. c. 73, and sect. 31 of 23 & 24 Vict. c. 93.

2. Where the rent-charge has been apportioned, and the whole of the rent-charge, or of the separate portion of rent-charge, with which the lands of any one owner

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In this case it is provided by sect. 5 of 9 & 10 Vict. c. 73 that the owner of the land, with the consent of the persons entitled to the receipt of the rent-charge, (or in the case of an infant, married woman,[1] or lunatic, the consent of the guardian, husband,[1] or committee), may apply to the commissioners to redeem by payment of a sum not less than twenty-four times the amount of the rent-charge or portion of rent-charge sought to be redeemed. The commissioners must thereupon certify under their hands and seal the sum of money in consideration of which such rent-charge may be redeemed (sect. 6).

3. Where land is charged with any rent-charge not exceeding 20*s*.

In this case 41 & 42 Vict. c. 42, s. 3, provides that either the owner of the land or the person entitled to the rent-charge may apply to the commissioners to redeem, and the commissioners may, if they see fit, by an order under their hands and seal direct the rent-charge to be redeemed by payment by the owner of the land, within such time as they may direct, of a sum equal to twenty-five times the amount of the rent-charge.

This case differs from 2 in that the commissioners have an option to grant or refuse leave to redeem, and

[1] But see now the Married Women's Property Act, 1882.

they are empowered to order redemption upon the application of either the landowner or the person entitled to the rent-charge: whereas in 2 the commissioners apparently have no option, being bound upon a proper application to grant the certificate, but, on the other hand, the consent of both the landowner and the person entitled to the tithes is necessary.

4. Where any land is charged with a rent-charge exceeding 20*s*.

In this case sect. 4 of 41 & 42 Vict. c. 42 provides that the application to the commissioners must be the joint application of the owner of the land and the person entitled to the rent-charge; and in the event of such person being entitled in right of any benefice or cure, the consent of the bishop of the diocese and the patron of the benefice must be obtained.

The consideration money in this case must be not less than twenty-five times the amount of the rent-charge, and, as in 3, the commissioners have the option of ordering the redemption or not.

5. Where by any confirmed instrument of apportionment any rent-charge or portion of rent-charge has been, by reason of error as to boundary or otherwise, charged on lands not within the parish, in respect of the tithes of which the aggregate rent-charge, the apportionment of which has been confirmed, was agreed or awarded to be paid.

In this case, either—

(1) The commissioners may, under sect. 3 of 9 & 10 Vict. c. 73, give notice that such rent-charge may be

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Upon being satisfied of the due payment of the consideration money, the commissioners are to certify under their hands and seal that such rent-charge, or portion of rent-charge, has been redeemed; and as respects the remainder of the rent-charge included in it the instrument of apportionment remains valid.

Should the consideration money not be paid, the commissioners must proceed to make a fresh apportionment or to correct the old one;[1] or

(2) The owner or owners of the lands upon which the rent-charge or portion of rent-charge is so erroneously charged, may, under sect. 33 of 23 & 24 Vict. c. 93, apply to the commissioners, who may, if they see fit, without the consent of any owner of land in the parish, or of the person entitled to the receipt of the rent-charge, by an order under their hands and seal, direct such rent-charge, or portion of rent-charge, to be redeemed by the payment by the owners of lands charged with the residue of the aggregate rent-charge within a certain time of a sum equal to twenty-five times the amount of the rent-charge. If any question should arise touching the situation or boundary of the lands alleged to have been erroneously charged, the commis-

[1] See p. 58.

sioners have the same power of hearing and settling it as they have in the case of making an award.[1] Chap. VI.

6. Where lands charged with an apportioned rent-charge are divided for building or other purposes into numerous plots.

This case is provided for by sect. 32 of 23 & 24 Vict. c. 93, and sect. 5 of 41 & 42 Vict. c. 42.[2]

(1) Under the former statute any one owner of the lands may apply to the commissioners, who, if it appears to them that no further apportionment of the rent-charge can conveniently be made, and if they see fit, may, without the consent of any other owner, or of the person entitled to the receipt of the rent-charge, and without limitation as to the amount, by an order under their hands and seal, direct such rent-charge to be redeemed by payment, within a certain time, by the owners of the land chargeable therewith, of a sum equal to twenty-five times the amount of the rent-charge.

(2) Under the later Act the commissioners have the same power upon the application of the owner of the rent-charge, or of the person for the time being entitled to its receipt.

It is submitted that this must be the true construction of the section. It is, however, very commonly understood quite differently, the word "owner" being taken to mean owner of the land, not owner of the rent-charge.

The following reasons seem to show that this construction is impossible:—

[1] See pp. 21, 22.

[2] See the two sections set out in full in Supplement No. 3, p. 191.

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(i) The wording of the section being so far exactly identical with that of sect. 32 of 23 & 24 Vict. c. 93, and the use of the word "owners" in the latter part of the section under consideration, show that the two sections apply to the same state of facts, and that both contemplate the divided lands being held by more than one owner, otherwise we should find "owner or owners," instead of "owners" simply. Thus, the opinion of those who consider that the two sections apply to a different state of things, the first where the divided lands are owned by more than one owner, and the second where the lands, though divided, are still owned by one owner, appears to be untenable;

(ii) Seeing, then, that the section contemplates, at all events, the possibility of there being more than one owner of the divided lands, had it been intended to enable a landowner to apply, the section would have read "any one owner of the said lands," as in the previous section; but this is not so, and if it were it would make the provision a mere repetition of that in the previous section, which could never have been intended. The words used are "*the* owner," *i. e.*, the definite owner of some definite thing, which can only be the rent-charge;

(iii) If "the owner" means the owner of the land, then no power to apply is in any case given

to the owner of the rent-charge, as distinguished from the person entitled to its receipt for the time being, where the owner is not at the time himself so entitled. The word "owner" of tithe has no doubt been defined to include the person entitled to the rents or profits for the time being;[1] and it might, therefore, be argued that the word "owner," if it meant owner of rent-charge, would be enough to include both, and that the addition of the words "or person for the time being entitled, &c.," would be unnecessary; but that would hardly be so where it is intended, as it seems to be here, to distinguish between them, and enable *either* to apply;

(iv) Throughout the other provisions relating to redemption where the owner of the lands is intended it is expressly so stated; and this is so in sects. 3 and 4 of the same statute.

7. Where land charged with rent-charge is taken for any of the following purposes:—

(1) The building of any church, chapel, or other place of public worship;

(2) The making of any cemetery, or other place of burial;

(3) The erection of any school under the Elementary Education Act (33 & 34 Vict. c. 75);

[1] See p. 16.

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(4) The erection of any town hall, court of assize, gaol, lunatic asylum, hospital, or any other building used for public purposes, or in the carrying out of any improvements under the Artizans' Dwellings Act (38 & 39 Vict. c. 36);

(5) The formation of any sewage farm under the provisions of the Sanitary Acts, or the construction of any sewer, or sewage works, or any gas or water works; or

(6) The enlarging and improving of the premises or buildings occupied or used for any of the above-mentioned purposes.

Sect. 1 of 41 & 42 Vict. c. 42 provides that the person intending to carry out any of the above-mentioned works must, as soon as he becomes possessed of the land, and before it is applied to any of the above purposes, apply to the commissioners to order the redemption of the rent-charge in consideration of a sum equal to twenty-five times its amount. This sum, with the expenses incident to the redemption, must be paid to the commissioners within a time fixed by their order.

If the land is taken by a company the application may be signed by its secretary; if by any corporation, school, or other board, by its clerk; and in any other case by such person or persons as the commissioners may require. (Sect. 2.)

8. Where a gross rent-charge is charged upon any land subject to common rights, or held or enjoyed in common during the whole year; except where the rent-

charge has been made payable in respect of the tithes of any gated or stinted pasture,[1] where such gates or stints[1] are rated to the relief of the poor. Chap. VI.

In this case the commissioners must, under sect. 20 of 23 & 24 Vict. c. 93, upon the application in writing of any person liable to pay the rent-charge, or any portion thereof, or of the person entitled to the rent-charge, call a meeting of the owners of the land and persons liable to pay the rent-charge, of which meeting they must give twenty-one days' notice. The majority in value of the persons attending this meeting may determine whether the rent-charge shall be commuted or redeemed by payment, within a time to be limited by the commissioners, of a sum equal to twenty-five times its amount, and may also determine whether the redemption money shall be raised by a rate on the persons liable to such rent-charge, or by sale of a portion of the land. In the latter case the commissioners may define and set out such part of the land as may be sufficient in value to meet the redemption money and the expenses of sale, and may proceed to sell and dispose of the same by public auction or private contract at their discretion. Upon every such sale the commissioners must sign and deliver to each purchaser a receipt for his purchase-money, which receipt is a sufficient discharge, and must convey the fee simple of the lands to the purchasers under their hands and seal, to such uses and in such manner as the purchasers direct. A form of convey-

[1] See note to p. 48.

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ance is given in a schedule to the Act, which is not, however, compulsory.

9. Where lands have been improperly included or charged with rent-charge in any confirmed instrument of apportionment.

In this case the commissioners have power, under sect. 3 of 10 & 11 Vict. c. 104, to sanction the redemption of the rent-charge by the persons capable of redeeming.

Whenever the commissioners intend to order compulsory redemption of any rent-charge, they must cause notice to be given of their intention, specifying a time, not less than twenty-one days after the date of the notice, within which objections in writing to the proposed order may be signified to them.

In case of any objection being made, the commissioners or an assistant commissioner must take it into consideration before finally making the order.

The propriety of the redemption and the amount for which any tithe rent-charge may be redeemed having been ascertained in one of the foregoing ways, it now becomes necessary to consider—1. By whom the money for the redemption, with the attendant expenses, is payable; 2. How it can be raised in certain cases by the person liable to pay it; 3. How it can be recovered in default of payment; and 4. To whom the redemption money is payable.

1. By whom the money is payable.

There seems to be no express provision in the Acts as to this, but it may be impliedly gathered from sect. 39 of 23 & 24 Vict. c. 93 that it is payable by the owners

of the land affected in such proportions as the commissioners may direct.

For the purpose of assessing the various amounts payable by different landowners this section empowers the commissioners to employ valuers, land surveyors, or other persons, in their discretion, and gives to the commissioners and persons so appointed by them all the powers vested in them with reference to an award or apportionment.[1]

2. How the money can in certain cases be raised by the person liable to pay it.

(1) It is provided by sect. 11 of 9 & 10 Vict. c. 73 that any owner of an estate in land less than a fee simple or fee tail in possession, or which may be settled upon any uses or trusts, may, with the consent of the commissioners, or[2] in such manner as they shall direct, charge upon such lands so much of the consideration money and other incidental expenses as represents the rent-charge upon such lands, with interest at four per cent. The charge is to be so calculated that it shall be lessened one-twentieth part at least every year.

(2) By sect. 21, sub-sect. (i), of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), capital money arising under that Act may be applied in the redemption of rent-charge in lieu of tithe charged upon the settled land.

[1] See pp. 19—23, 35.

[2] The word "or" must, undoubtedly, be an error in the drafting or printing of the statute. If the commissioners do not consent, how can they be in a position to state the manner in which the charge is to be made? It should no doubt read "and."

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3. How the money can be recovered in default of payment within the time fixed.

It may be recovered in the same way as the expenses of an award or apportionment[1] (sect. 39 of 23 & 24 Vict. c. 93), and the commissioners may for the purposes of such recovery, and to collect the money, employ valuers, land surveyors, and other persons; and they themselves, and the persons so appointed by them, have the same powers as in the case of assessment;[2] and all expenses so incurred may be recovered as part of the original expenses.

Before proceeding under this section to collect any redemption money or expenses, the commissioners must cause a schedule to be prepared showing (1) the total amount of the redemption money and expenses, and (2) the share to be borne by each person interested. This schedule is to be deposited for inspection in the same way as a draft instrument of apportionment.[3] Notice of the deposit is to be given by the commissioners, which notice is also to specify a time, not less than twenty-one days after the date of the notice, within which objections in writing to the proposed apportionment of redemption money and expenses may be signified to the commissioners. Should any such objections be made, the commissioners are to take them into consideration before collecting the redemption money and expenses. If there are no objections, or, if there are, when they have determined them, the commissioners can proceed to collect the

[1] See p. 53. [2] See last page.

[3] See p. 37.

redemption money and expenses in the same way as in the case of an award or apportionment.[1] Chap. VI.

4. To whom the redemption money is to be paid.

(1) Where the person entitled to the rent-charge is entitled to it in fee simple in possession, or is able to dispose of the fee simple in possession, and is not

(i) a spiritual person entitled in respect of his benefice or cure, or

(ii) a corporation unable to alienate the rent-charge,

the payment or tender should be made to such person, or in the case of a corporation to its proper officer, (9 & 10 Vict. c. 73, s. 7).

(2) Where the person entitled to the rent-charge is entitled in respect of any benefice or cure, the payment should be made to the Governors of Queen Anne's Bounty. The receipt of the treasurer is a sufficient discharge, and the person paying need not trouble to see to the application of the money (9 & 10 Vict. c. 73, s. 8).

(3) Where the person entitled is only entitled for a limited estate or interest, or is under any disability, or is a corporation unable to make an absolute sale, the money is to be paid under sect. 9 of 9 & 10 Vict. c. 73, and the Supreme Court of Judicature (Funds, &c.) Act, 1883, to the Paymaster-General of the Supreme Court of Judicature, with the following exceptions, viz. :—

(i) in any of the above cases, where the consideration money payable for the redemption of all the rent-charge does not exceed 20*l.*, it may, at

[1] See p. 52.

the option of the commissioners, be paid to the person for the time being entitled thereto, or, in case of disability, for the use of such person to his guardian, committee or trustee;

(ii) in the case of a person entitled for a limited interest only, it may, at his option, be paid to the trustees acting under the will, conveyance, or settlement under which he is entitled, or if there are no such trustees, to trustees to be nominated under the hands and seal of the commissioners; and

(iii) in the case of a corporation unable to make an absolute sale being entitled, where the money to be paid for redemption does not exceed 200*l.*, it may be paid to trustees to be nominated under the hands and seal of the commissioners (23 & 24 Vict. c. 93, s. 37).

The money so paid to the Paymaster-General, or to the trustees, may be applied in any of the following ways:—

(i) the purchase or redemption of the land tax;

(ii) the discharge of any debt or incumbrance affecting the rent-charge, or any other hereditaments settled therewith to the same or like uses, trusts, or purposes;

(iii) the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes;

(iv) payment thereof to any person becoming absolutely entitled.

Until its application in one of the above ways, it was provided by sect. 9 of 9 & 10 Vict. c. 73 that the money should be invested in consols, or government or real securities, and the income paid to the person entitled.[1]

(4) Where the person absolutely entitled refuses to accept the redemption money, or, if the rent-charge is subject to incumbrances, and the commissioners consider that the incumbrancers should be protected, the redemption money is to be dealt with as in the case of an owner of a limited estate (23 & 24 Vict. c. 93, s. 36).[2]

The redemption money having been duly paid or tendered, the commissioners may certify that the rent-charge has been redeemed.

The certificate is to be under the hands and seal of the commissioners, and must show the amount of the consideration money, and by whom it has been paid, and to what person, or in what manner. Copies of every such certificate, signed and sealed by the commissioners, are to be deposited in the same way, and copies of, and extracts from, any copy are to be furnished in the same manner, as in the case of confirmed instruments of apportionment.[3]

[1] By sect. 10 of 23 & 24 Vict. c. 38 trustees empowered to invest on (*inter alia*) government securities may invest on the same securities, &c., as are authorized for cash under the control of the Court.

It seems that moneys paid to the Paymaster-General under this Act are cash under the control of the Court (see *Ex parte St. John's College, Oxford*, 22 Ch. D. 93).

A list of the securities, &c., at present authorized for the investment of cash under the control of the Court will be found in R. S. C., Ord. XXII. r. 17 (November, 1888).

[2] See p. 85.

[3] See pp. 38—40.

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Every recital or statement in any such certificate, or in any sealed copy thereof, is made evidence of the matters recited therein (9 & 10 Vict. c. 73, s. 12).

By sect. 6 of 9 & 10 Vict. c. 73 it is provided that if in any case consideration money is paid to the wrong person, the land which was charged with the rent-charge shall be charged with the payment of the consideration money to the person rightly entitled, as if it were unpaid purchase-money; and the owner of the land is given the same remedies against the person to whom the consideration money has been wrongfully paid as a purchaser would have.

The statute 48 & 49 Vict. c. 32 extends to the case of any corn-rent, rent-charge, or money payment, payable out of or charged on any land in lieu of tithes by an Act of Parliament, all the above powers and provisions for redemption, with the following additions and exceptions:—

1. Every application to redeem is to be accompanied with a certified copy or extract from the Act, and from the award made in pursuance thereof, signed by the person or persons having the custody of the Act and award (if any), showing the amount of the corn-rent, rent-charge, or money payment proposed to be redeemed.

2. It must also be accompanied with such evidence or proof of the payment of the corn-rent, rent-charge, or money payment, and such particulars of the land liable thereto, as the commissioners think fit.

3. If the corn-rent, rent-charge, or money payment has been varied by any order of justices in quarter

sessions, a certified copy of the last of such orders, signed by the person or persons having the custody of the order, or some other satisfactory evidence of the variation, must also accompany the application. In any case of variation by order of justices, the redemption money is to be calculated on the varied amount.

4. Copies of the certificates of redemption are to be sealed by the commissioners, and deposited with such persons as the commissioners may in each case determine.

CHAPTER VII.

RECOVERY OF TITHE RENT-CHARGE.

THE Tithe Act of 1891 provides a totally new procedure for the recovery of the rent-charge.

Hitherto, it has, as a general rule, been paid immediately by the occupier, and in default of payment the tithe owner could only recover it by distress, or, in default of a sufficient distress, by taking possession of the land out of which it issued.[1] So far as regards tithe rent-charge, as defined in the recent Act, these two methods of recovery have been abolished, but, besides the tithe rent-charge so defined, there are certain rent-charges to which the Act does not extend, viz.:

(1) Rent-charges payable under the Tithe Act, 1860, in respect of the tithes on any gated or stinted pasture[2] (sect. 9, sub-sect. (2)).

(2) Any sum or rate payable for each head of cattle or stock turned on land subject to common rights, or held or enjoyed in common (*id.*).[3]

[1] In *Bailey* v. *Badham* (30 Ch. D. 84), Bacon, V.-C., held that the annual sum payable in lieu of tithes, though in the nature of a rent-charge, is not a rent-charge strictly so-called, so as to be a charge on the inheritance, and recoverable by sale of the land, and this is now expressly recognized by sect. 2, sub-sect. (4), of the Tithe Act, 1891.

[2] See p. 48.

[3] See pp. 46, 47.

(3). Rent-charges issuing out of the lands of a railway company, except so far as relates to the assessment and recovery of rates (sect. 10, sub-sect. (1)), and

(4) Rent-charges payable under the Extraordinary Tithe Redemption Act, 1886 (sect. 9, sub-sect. (2)).[1]

Of these rent-charges, (1)[2] and (3) are still recoverable only by the old methods, which are moreover resorted to in certain cases under the new procedure; and it may, therefore, be convenient to consider them before proceeding to deal with that procedure.

The old methods are—1. Distress; and 2. Taking possession of the land.

1. Distress.

A tithe owner levying a distress must observe the following conditions:—

(1) The rent-charge must be twenty-one days in arrear (sect. 81 of the principal Act).

(2) Ten days' notice in writing must have been given to, or left at the usual or last-known residence, or have been sent by post in a registered letter to the office or usual place of abode of the tenant in possession of the lands in respect of which the rent-charge is in arrear (sect. 81 of the principal Act and sect. 30 of 23 & 24 Vict. c. 93), or if no person can be found on the lands, then the notice may be posted in some conspicuous place on the land (sect. 17 of 5 & 6 Vict. c. 54).

Q. B. v. Thorne 1933 W.N. 229.

[1] As to how this may be recovered, see pp. 131, 132.

[2] It is conceived that the general provision in sect. 10, sub-sect. (4), of the Act of 1891 does not cover such rent-charges, as they are not merely directed to be recovered as tithe rent-charge, but the mode is specified, viz., by distress, see p. 48.

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Every person entitled to distrain may charge 2*s.* 6*d.* for each notice issued by him in accordance with the provisions of the Acts, and may add the amount to, and recover it as part of the arrears of rent-charge (sect. 29 of 23 & 24 Vict. c. 93).

(3) No distress can be levied for more than two years' arrears (sect. 81 of the principal Act).

(4) The distress can be taken—

(i) Upon the lands liable to the payment (sect. 81); or

(ii) On any part of the lands so liable[1] (*ibid.*); or

(iii) On any land in the same parish occupied by the same occupier, if he is also the owner or holds the lands as tenant under the same landlord under whom he holds the lands liable to the rent-charge,[1] with this exception, that no land is liable to be distrained on or entered upon to satisfy any rent-charge if the land upon which it is charged has been washed away by the sea or otherwise destroyed by any

Here the distinction between a rent-charge in gross and one apportioned on separate closes of land (see p. 35) becomes very important. Suppose A. owns a farm, all in one parish, containing six closes, B, C, D, E, F, G, and sells close B to H.; if the rent-charge is apportioned in gross, *e. g.*, £10 on the whole farm, the tithe owner may distrain for any arrear of any part of the tithe rent-charge on any lands in the parish owned and occupied by A., and also on any lands in the parish owned and occupied by H.; but if the rent-charge is apportioned, *e. g.*, £2 on B, £1 on C, £1 on D, and so on, then the lands of A. cannot be distrained upon for arrears of rent-charge on B, nor the lands of H. in respect of the rent-charges on C, D, E, F, or G.

natural calamity (sect. 85 of the principal Act); or

(iv) Hitherto, in the case of Quakers, not only on the premises, but anywhere else (sect. 84 of the principal Act);[1] or

(v) In the case of railway companies, on any property of the company, wherever situate (sect. 22 of 7 & 8 Vict. c. 85); or

(vi) In the case of a rent-charge apportioned on a gated or stinted pasture,[2] on the goods and chattels of the person rated to the relief of the poor in respect of the gates or stints, whether found on the pasture or elsewhere (sect. 19 of 23 & 24 Vict. c. 93); or

(vii) On lands allotted on inclosure of commons in respect of rights of common appendant or appurtenant to any tenements or hereditaments, for arrears of rent-charge charged on such tenements and hereditaments (sect. 14 of 2 & 3 Vict. c. 62).

The process of distraint itself being similar to that in the case of landlord and tenant, will not be further gone into here.

In the case of Quakers, however, the distress might have been sold at once, without being previously impounded or kept (sect. 84 of the principal Act).[1]

[1] This section is expressly repealed by sect. 11 of the Tithe Act, 1891, and the injustice under which Quakers have so long laboured has been removed.

[2] See p. 48.

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It seems, also, that arrears of rent-charge payable by an owner of cattle or stock under 2 & 3 Vict. c. 62, s. 13,[1] may be distrained for in the usual way as rent in arrear, and that the conditions noted above need not be observed.

Sect. 19 of 5 & 6 Vict. c. 54 provides that no irregularity or unlawful act done by the person distraining, or his agent, in the conduct, sale, or disposition of the distress, shall make the distress itself unlawful, provided the amount distrained for is justly due, nor shall the party making the distress be deemed in consequence a trespasser *ab initio*, but the party aggrieved may recover any special damage he has suffered, provided he gives one calendar month's[2] notice in writing of his intention to do so.

Any one of the following pleas would be a sufficient defence to such an action:—

(1) That one calendar month's notice in writing had not been given to the defendant;

(2) That tender of sufficient amends was made before action brought;

(3) That plaintiff has suffered no special damage;

(4) That a sufficient sum of money has since action brought been paid into Court to cover the damage suffered and costs.

If a tithe owner distrains, and afterwards obtains judgment in an action of replevin, he is not entitled to double costs under sect. 22 of 11 Geo. 2, c. 19, nor to

[1] See pp. 46, 47.

[2] Originally ten days, extended by 5 & 6 Vict. c. 97, s. 4. As to what is a calendar month, see *Freeman* v. *Read*, 32 L. J. (M. C.) 226.

the full and reasonable indemnity substituted therefor by sect. 2 of 5 & 6 Vict. c. 97.[1]

2. Taking possession of the land.

To enable the tithe owner to do this—

(1) The rent-charge must be forty days in arrear;

(2) There must not be a sufficient distress[2] on the premises;

(3) He must apply in Chambers[3] on affidavit, setting out the facts, for a writ to be issued to the sheriff of the county in which the lands are situated, requiring him to summon a jury to assess the arrears of rent-charge unpaid, and to return the inquisition on a day named in the writ;

(4) A copy of the writ, and notice of the time and

[1] See *Newnham* v. *Bever*, 8 C. B. 560.

[2] In estimating this, regard must be had to the value of growing crops, though not capable of realization within the forty days (*Ex parte Arnison*, L. R. 3 Ex. 56).

The absence of a sufficient distress is a question of fact. The merely temporary absence of cattle of sufficient value from a field—*e. g.*, while watering—would probably be held not to amount to such absence. *Secus*, their absence in the usual course of husbandry from a field eaten down, though they had been there just previously (*Ex parte Jones*, 5 Times L. R. 512. The distress to be sufficient must be available, and the person seeking to distrain must be able to get at it (*Doe* d. *Chippendale* v. *Dyson*, 1 M. & M. 77).

It is not necessary that the owner of the rent-charge should have ineffectually attempted to distrain at the end of all or any of the preceding half years, and he is entitled to recover two years' arrears by distress, or by taking possession of the land in default, though there may have been a sufficient distress on the land at the end of each half year except the last (*In the matter of Camberwell Rent-charge*, 4 Q. B. 151).

[3] The application may be made *ex parte* (*In re Hammersmith Rent-charge*, 4 Exch. 87).

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place of executing it, must be given to the owner of the land, or left at his last-known place of abode, or with his known agent, ten days before the execution of it; or they may be served on any person occupying or residing on the land; or if no person is to be found there, by fixing them in some conspicuous place on the land (5 & 6 Vict. c. 54, s. 17);

(5) The sheriff must execute the writ by summoning the jury to assess the arrears. The tithe owner will have to prove the amount due to the satisfaction of the jury;

(6) The costs of the inquisition by the jury must be taxed by the proper officer;

(7) The return of the inquisition must be made by the sheriff, either during the sittings or vacation;

The owner of the rent-charge may then, if the return is in his favour, sue out a writ of possession commanding the sheriff to put him in possession of the lands until the arrears of rent-charge found due by the inquisition, and the costs previously taxed, and also the costs of the writ of possession and of its execution, and the cost of cultivating and keeping possession of the lands, shall be fully satisfied.

By this remedy only two years' arrears, exclusive of the time during which the owner of the rent-charge is in possession, can be recovered.

The tithe owner, while in possession of the land, may cultivate it himself, or may let it, or any part of it, for any period not exceeding one year at a reasonable rent (5 & 6 Vict. c. 54, s. 12). He must keep an account

of the rents and produce of the land, and receipts and payments; and it is advisable that he should keep all vouchers, as under sect. 83 of the principal Act he may at any time be called upon to render an account in Chambers. When all the arrears, costs, and expenses, as above set out, have been satisfied, a writ of supersedeas is issued, and the possession restored to the owner or occupier of the land, subject, however, to any tenancy created under the provisions of sect. 12 of 5 & 6 Vict. c. 54.

The Court or a judge,[1] under sect. 83 of the principal Act, can also at any time give such summary relief to the parties as may seem fit.

Having considered the methods of recovery hitherto in force, but now superseded, except in exceptional cases, we come to the alterations effected by the Act of 1891.

Its objects apparently are two:—1, the substitution of the landowner for the occupier as the immediate payer of the rent-charge, and 2, the abolition of the process of distraint by the tithe owner, and the substitution for it of a procedure in the County Court.

1. As to this, it was always the intention of the Commutation Acts that the landowner should pay the rent-charge, though in practice it has been generally paid by the occupier, owing, no doubt, to the fact that it was

[1] *I.e.*, a judge in Chambers (*Salm Kyrburg* v. *Posnanski*, 13 Q. B. D. 218; and *Amstell* v. *Lesser*, 16 *id.* 187); and by O. LIV. r. 12, a Master in the Queen's Bench Division may, with certain exceptions, transact all business which may be transacted by a judge in Chambers.

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The Act of 1891 now, by sect. 1, sub-sect. (1), provides that the rent-charge shall be payable by the owner of the lands, notwithstanding any contract between him and the occupier, and that any contract made between them after the passing of the Act[2] for its payment by the occupier shall be void.

In the case of a pre-existing contract, under which the occupier is liable to pay the tithe rent-charge, sub-sect. (2) of sect. 1 provides that the occupier shall cease

[1] See p. 42.

[2] *I. e.*, 26 March, 1891.

to be bound by that part of his contract, but shall be liable to pay to the landowner such sum as the latter has properly paid on account of the tithe rent-charge which the occupier is liable to pay under such contract, exclusive of any costs incurred or paid by the owner in respect of such rent-charge. Where the lands are occupied by several occupiers who have contracted to pay the rent-charge, then each occupier is only to be liable to pay such proportion of the total sum paid by the owner on account of that rent-charge as the rateable value of the lands occupied by him bears to the rateable value of the whole of the lands occupied by such occupiers.[1]

Any sum payable under this sub-section by an occupier to a landowner is recoverable from him by distress under sub-sect. (3), as provided by sects. 81 and 85 of the principal Act and enactments amending those sections, and in no other way, that is to say, as the tithe owner previously to this Act recovered his rent-charge.[2]

In order, however, to entitle a landowner to recover this sum, he must have served on the tithe owner a notice of such liability, which is called an "occupier's liability notice" (rule 3). If he has paid any sum before serving this notice, he will not be entitled to recover it from the occupier until he has obtained from the County

[1] Though not so expressed in the statute, this must evidently be confined to mean the rateable value of the lands out of which the rent-charge, being a rent-charge in gross (see p. 35), issues.

[2] See pp. 91 *et seq.*

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Court a certificate that there was good and sufficient cause for the failure to give such notice, and that the occupier has not been prejudiced thereby.[1]

2. In every case where any sum on account of rent-charge is in arrear for not less than three months, or more than two years (sect. 10, sub-sect. (2)), the Act provides that the person entitled[2] to such sum, hereafter called "the applicant," may, without any limit as to amount, apply, under sect. 2, sub-sect. (1), of the Act, to the County Court of the district in which the lands, or any part of them, are situated. This he must do by filing with the registrar of the Court, either himself, or by his duly authorised agent[3] (not necessarily a solicitor), a notice of application according to one of the forms 1, 2, or 3 given in the Appendix to the rules made under the Act, whichever is applicable, and as many copies of the notice as there are persons to be served with it (rule 2); and if he has been served with an occupier's liability notice,[4] a copy of that notice also. The registrar thereupon is to appoint a day for the hearing of the application, and ten clear days,[5] at least, before the appointed day must cause to be served[6] on the owner of the lands, and where an occupier's liability

[1] For the procedure to be followed by a landowner desiring to obtain a certificate, see Rules 36 to 38 and Forms 28—30 in Appendix to Rules.

[2] The rules more correctly speak of him as the person "claiming to be entitled."

[3] See sect. 5, sub-sect. (1), and Rule 12.

[4] See last page.

[5] See Rule 54.

[6] For mode of service, see Rules 44 and 45.

notice has been filed, also on the occupier, a copy of the applicant's notice, and also a notice according to form 4 in the Appendix (sect. 2, sub-sect. 6, and rule 4). An owner or occupier so served is called "a respondent."

If any respondent desires to oppose the application, he must, at least five clear days[1] before the day appointed for the hearing, file with the registrar notice of his opposition according to form 5 in the Appendix. Notice of any such intended opposition must be sent[2] by the registrar, on the same day that he receives it, to the applicant according to form 6 in the Appendix (rule 5). If the applicant has not, prior to the filing of his notice of application, been served with an occupier's liability notice, but is subsequently served with one before an order has been made, he must file a copy of the notice with the registrar as soon as possible, who is thereupon to cause a notice of the application to be served on the occupier (rule 6), and, if necessary, for the purpose of giving him the ten clear days' notice, he must appoint another day for the hearing of the application, inserting it in his notice to the occupier, and giving notice of the alteration to the applicant and owner (rule 7).[3]

Where the applicant does not know or cannot ascertain[4] the owner of the lands, he may so state in his

[1] See Rule 54.

[2] For the manner in which this is to be sent, see Rules 44, 45, and 50.

[3] For form of such notice, see Form 7 in Appendix to Rules.

[4] It seems that it will be sufficient for the applicant to state that he does not know. Apparently he need take no steps to ascertain. One would have expected "and" instead of "or."

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notice of application, and in this case, and also where it is found that service on the owner cannot be effected by post, any proceeding may be taken against him without naming him, and notices and documents may be served as provided by rule 46[1] (sect. 2, sub-sect. (1), and rule 13). Again, it may often happen that an applicant, though he may be tolerably certain that a certain person is the owner, may not be absolutely so, and consequently rule 14 provides that where he states in his notice of application his desire that, in addition to service on the person named by him as owner, there shall also be service on the owner through the occupier or person receiving the rents and profits of the lands for the owner, and states also the name of such occupier or person, then service shall be made upon such occupier or person as prescribed by rule 48, and such service shall be deemed good service on the owner.

It would seem that where there is any doubt as to the boundary of the lands subject to tithe rent-charge, the owner of the land must pay the expense of defining the land out of which it issues.[2]

Where no notice of opposition is given by any respondent, the Court will, after expiration of five clear days[3] from the time limited for giving such notice, with-

[1] Rule 47 provides for substituted service where necessary, and Rule 49 provides that service on one of two or more owners of land shall be good service on all the owners, other than one in possession.

[2] *Searle* v. *Cooke*, 43 Ch. D. 519; but *semble*, he can have recourse to the Commissioners under their powers to settle boundaries (see pp. 21, 22).

[3] See Rule 54.

out any hearing, unless the total amount stated in the notice served on the respondent or respondents[1] be previously paid into Court, order the sum claimed, together with costs,[2] to be recovered in one of the modes hereafter considered[2] (sect. 2, sub-sect. (1), and rule 8).

Where notice of opposition has been given, the Court will, on the day appointed, hear the opposing respondent or respondents (sect. 2, sub-sects. (1) and (6)), but they will be confined to the grounds of opposition mentioned in the notice of opposition, unless the applicant consents, or the Court, upon such terms as to adjournment, payment of costs, or otherwise, as it thinks fit, grants leave to the contrary (rule 11). Having heard the applicant and respondents, the Court may order the sum claimed, or so much as appears to be due, to be recovered, together with costs.[2]

Where a respondent files notice of opposition after the time allowed by the rules, but before an order has been made by the Court, the Court may allow him to be heard on such terms as to payment into Court, or otherwise, as the Court thinks fit, in which case it must appoint a day for the hearing, and give notice thereof to the applicant and respondent (rule 9).

Where notice of opposition has been given, but no respondent appears at the hearing, the application may

[1] The rule says, unless the amount "ordered to be recovered." This cannot be taken literally, as no amount can possibly have been "ordered" to be recovered, the only proceedings having been the serving of the requisite notices. Unless the meaning adopted in the text can be implied from the section and the rule taken together, it seems difficult to suggest what the provision can refer to.

[2] See sect. 5, sub-sect. (2).

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be forthwith granted, without any proof by the applicant, but he is to be allowed the same costs of solicitor and witnesses as if the respondent had appeared (rule 10).[1]

Sect. 8, sub-sect. (1), provides that where the County Court is satisfied that, if the sum claimed is paid, the total amount paid on account of tithe rent-charge for the period of twelve months next preceding the day on which the sum claimed became payable will exceed two-thirds of the annual value of the lands, as assessed for income tax under Schedule B of the Income Tax Act, 1853, or, in default of such assessment, as ascertained and certified by the general commissioners of income tax, in accordance with the provisions of sect. 8, sub-sects. (4) and (5), it shall order the remission of so much as is equal to the excess, and that amount shall not be recoverable;[2] and sub-sect. (2) provides that where the lands are assessed for the purpose of Schedule B, together with other lands, the surveyor of taxes for the parish, on the application of the owner or occupier, shall divide the annual value in such assessment, and give notice to the applicant and the owner of the rent-charge of the annual value determined on such division. Either party, if dissatisfied with his decision, may appeal to the general commissioners of income tax for the division, who shall finally determine the proper division of the annual value.

No remission can be granted except in the case of lands used solely for agricultural or pastoral purposes, or the growth of timber or underwood (sub-sect. (8)).

[1] See sect. 5, sub-sect. (2).

[2] For form of order, see Form 26 in Appendix to Rules.

Nor can any remission be granted where a special apportionment has been made under sect. 58 of the principal Act,[1] unless the Court is satisfied that the applicant would have been entitled to such remission if no such special apportionment had been made (sub-sect. (6)).

It seems next to impossible to obtain a remission in such a case. The Court must be satisfied—(1) what the lands originally intended to be charged are; (2) what their total annual value, as assessed under Schedule B, or as certified in accordance with the provisions of sect. 8, is; (3) that the rent-charge claimed exceeds such total annual value; and (4) by how much.

Any respondent desiring to obtain a remission under sect. 8 must, in his notice of opposition, specify his intention to apply for such remission, and also state whether there is more than one tithe rent-charge issuing out of the lands, and he must, on the hearing of the tithe owner's application, produce the certificate of the annual value (rule 32).

The right to appeal from any decision under this section or as to the assessment, is expressly given to the tithe owner as well as the landowner by sub-sect. (3).

Where it appears to the registrar, whether from the respondent's notice, or otherwise, that there is more than one rent-charge issuing out of the lands in respect of which remission is claimed, before any order for remission is made he must cause notice to be served on the owner of any tithe rent-charge issuing out of the lands,

[1] See p. 44.

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other than that in respect of which the application is made (rule 33).[1] If, at the hearing of the application, any such other tithe owner appears and applies for an order for the recovery of any sum due on account of his rent-charge, the Court may, if the respondent appears, make an immediate order for the recovery of any sum due on account of such rent-charge as well, and direct that the two orders be simultaneously executed (rule 34). Any sum ordered by the County Court to be recovered by a tithe owner may be recovered as follows, and in no other way (sect. 2, sub-sect. (1)) :—

(1) Where the landowner is also the occupier, the Court is to appoint an officer[2] who, subject to the direction of the Court, will have the same powers of distraint as the tithe owner would have had prior to the passing of the Act,[3] and no others. If the officer appointed to distrain finds no sufficient distress[4] upon the lands subject to the distraint, and that it would be useless to attempt any further distress,[5] he is to make a written report to that effect to the applicant and to the Court.[6]

Upon receipt of this report the applicant may pro-

[1] For form of notice, see Form 25 in Appendix to Rules.

[2] For form of order, see Form 9 in Appendix to Rules.

[3] See pp. 91 *et seq.*

[4] See note [2] to p. 95.

[5] This provision is contained in Rule 24. If it means anything further than or inconsistent with the mere non-existence of a sufficient distress on the land at the time, *quære*, if it is not *ultra vires*, as adding another requirement than that specified in the Act as the only one necessary to entitle the tithe owner to take possession.

[6] A form of report is given in Appendix to Rules, Form 17.

ceed to obtain possession of the lands "under sect. 82 of the Tithe Act, 1836" (sect. 2, sub-sect. (2), rule 24).

This can hardly mean that the applicant must take the proceedings provided by that section for assessing the sum due and recoverable, as that has already been done by the County Court. It is apprehended that all the tithe owner will have to do is to sue out a writ of possession as previously described,[1] and further that, though only the 82nd section of the principal Act is mentioned, the provisions of sect. 83 of that Act, and of sect. 12 of 5 & 6 Vict. c. 54,[2] will be held to apply to his possession.

(2) Where the owner is not also the occupier, the order for payment is to be executed by the appointment[3] by the Court of a receiver of the rents and profits of the lands, and of any lands which would have been liable to be distrained on under sect. 85 of the principal Act[4] (sect. 2, sub-sect. (3), and rule 15). Where any of such other lands are held at one rent with lands in another parish, sub-sect. (3) and rules 25 to 28 provide for the apportionment of the rent.[5]

If the applicant in his notice of application has named any person whom he desires to be appointed receiver, the Court shall, unless for special reasons it

[1] See p. 96.

[2] See pp. 96, 97.

[3] A form of appointment is given in Appendix to Rules, Form 8.

[4] See p. 92, also Rule 16.

[5] The forms applicable are Forms 18—21 in Appendix to Rules.

[6] The existence of "special reasons" is made a condition prece-

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shall otherwise determine (rule 17), appoint that person receiver. If the applicant has not desired in his notice any particular person to be appointed receiver, or if the Court determines not to appoint the person so desired by him, it may appoint any person it thinks fit. If the person appointed receiver is not a permanent officer of the Court, it may require him to give such security as it thinks fit (*id.*).

The Court may confer upon a receiver appointed by it any powers which it can ordinarily confer upon receivers, except where otherwise provided, but it shall have no power to order any sale of the lands[1] (sect. 2, sub-sect. (4)).

The receiver on his appointment must give notice[2] as soon as possible of his appointment to the occupiers of the lands, and require them to attorn tenants to him, and give him such particulars of their tenancies as he may require (rule 18). If an occupier refuses to give the required particulars, the receiver may apply to the Court to compel his attendance as a witness, and, if necessary, to produce documents (rule 19).

If he refuses to attorn, and it becomes necessary to enforce payment of rent in arrear, the receiver must

dent to the jurisdiction of the Court to determine otherwise; the expression is a vague and unfortunate one, and calculated to lead to the same proceedings as the expression "good cause" in R. S. C., O. LXV. r. 1, as to which see *Jones* v. *Curling*, 13 Q. B. D. 262, and *Huxley* v. *West London Extension Rail. Co.*, 14 App. Cas. 26.

[1] This is an affirmation of the decision of Bacon, V.-C., in *Bailey* v. *Badham* (see note [1] to p. 90).

[2] For a form of notice, see Form 10 in Appendix to Rules.

apply to the Court for an order authorising the receiver to distrain in the name of the landowner, or for such other order as the Court thinks just under the circumstances[1] (rule 20).

The receiver must pay into Court, without delay, any sums received by him on account of rents and profits, after deducting:—(i) the costs of any distress made by him, which by sect. 2, sub-sect. (8), are provided to be the same as those payable under the Law of Distress Amendment Act, 1888,[2] and (ii) any remuneration for his services which may have been allowed by the Court, but this must, in no case, exceed 5 per cent. of the rents and profits received by him (rule 21). All sums so paid into Court by the receiver are to be paid out by the registrar to the applicant, until the amount ordered to be recovered has been satisfied. The registrar shall then discharge the receiver, and pay any balance to the person entitled to the rents and profits upon his application (rule 22).

The above is the ordinary procedure on the appointment of a receiver, but there remain two exceptional cases to consider: (a) Where the receiver after his appointment finds that the lands are really occupied by the owner; and (b) Where he finds that the lands are let on such terms as not to reserve a rent sufficient to enable him to recover from the owner the sum ordered to be recovered.

(a) In this case, unless the owner pays the sum

[1] For a form of such order, see Form 11 in Appendix to Rules.

[2] See Table in Supplement II., p. 187.

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ordered to be recovered, or attorns tenant to the receiver, he must report the matter to the Court.[1] The Court may thereupon make an order directing that the order for recovery be executed in the manner provided for the case of the owner being also the occupier,[2] and shall if it makes such order, unless for special reasons[3] it otherwise determines, appoint the receiver to be the officer to distrain. Of this order notice is to be given to the person alleged by the receiver to be the owner, that unless he files with the registrar a notice of objection within ten clear days,[4] the order will take effect.[5]

If notice of objection[6] is filed, the registrar is to fix a day for hearing, and to give notice[7] thereof to the person who has filed it, suspending the operation of the order meantime (rule 23).

(b) In this case the receiver must make a written report of the fact to the Court, accompanied by a statement,[8] containing the following particulars:—

(i.) The terms on which the lands are let;

(ii.) The sum ordered to be recovered;

(iii.) The costs to be recovered;

(iv.) Any sum already recovered;

[1] For a form of such report, see Form 12 in Appendix to Rules.

[2] For a form of such order, see Form 13, in Appendix to Rules.

[3] See note [5] to p. 107.

[4] See Rule 54.

[5] For a form of notice, see Form 14 in Appendix to Rules.

[6] For a form of notice, see Form 15 in Appendix to Rules.

[7] For a form of such notice, see Form 16 in Appendix to Rules.

[8] Presumably this should also be in writing, though not so provided in the rule.

(v.) The total amount remaining unrecovered; and

(vi.) Whether under the order for recovery he is receiver of any lands besides those in respect of which his report is made (rule 29).

If the Court is satisfied that a *primâ facie* case is made out, it must cause notices, containing the particulars specified in rule 30, to be given, not less than ten clear days before the day appointed for the hearing, to the occupier of the lands, to the applicant, and to the owner of the lands (rule 30).[1]

The Court may then, after hearing the occupier of the lands, the applicant, and the owner, if they appear, make an order appointing an officer to distrain on the lands for the amount mentioned in the order, including such costs incurred in respect of the duties of the receiver, or otherwise, as it may allow, and giving such directions as to the continuance of the receiver,[2] or otherwise, as it thinks fit. In any such order the receiver shall be appointed the officer to distrain, unless the Court otherwise determines for special reasons[3] (rule 31).

Two remedies are provided by sect. 4 for any occupier, not liable under a contract existing prior to the passing of the Act, to pay the rent-charge, from whom any sum has been recovered by the above procedure: (i.) he may deduct from any sums at any time be-

[1] For forms of notices, see Forms 22, 23, in Appendix to Rules.

[2] This may be necessary where the receiver has been appointed by the order to receive the rents and profits of other lands as well.

[3] See note [5] to p. 107. For form of order, see Form 24 in Appendix to Rules.

Chap. VII. coming due from him to his landlord, any amount recovered from him for rent-charge or costs, with interest at 4 per cent., and (ii.) he may recover from his landlord by action any amount so recovered from him, as money paid on account of his landlord.

It is further provided by sect. 2, sub-sect. (5), that any sum ordered by the Court to be recovered, shall be payable by a trustee in bankruptcy, sheriff or officer of a Court in possession, as if it were tithe rent-charge under the previous Acts.[1]

Sect. 10, sub-sect. (3), provides that nothing in the Act is to alter the priority of any rent-charge in relation to any other charge or incumbrance on the lands, and sub-sect. (2) provides that no sum on account of rent-charge shall be recovered, unless proceedings have been taken for its recovery within two years of the date when it became payable.

Lastly, sect. 2, sub-sect. (8), provides that the fees payable on proceedings for recovery of rent-charge[2] are not to exceed those set out in the Schedule to the Act; and rule 42 provides that all costs of and incident to any application to the Court, or any proceeding under the Act or rules, are to be paid by the parties as the Court thinks just, and in the absence of any special direction are to abide the event of the application. All costs are, unless otherwise specially provided by the Act or rules,

[1] These persons were, together with the person who would otherwise have been entitled to the possession, regarded as the owners (see pp. 16, 17).

[2] Other than those payable on a distress (see p. 109).

to be taxed by the registrar on the scale applicable to proceedings under the County Courts Act, 1888 (rule 43).

Where any land charged under the instrument of apportionment with one amount of rent-charge belongs to two or more owners in several portions, if the owner of one portion, or his tenant, has paid what he considers to be more than his just proportion of the rent-charge, it was provided by 5 & 6 Vict. c. 54, ss. 16 and 17, that he may make a demand in writing upon any other landowner, or his tenant, whom he considers liable to contribute. This demand may be served upon any person occupying or residing on the land chargeable with such contribution, or, if no person can be found on it, then by affixing it in some conspicuous place on the land. If the landowner or his tenant, after demand, refuses or neglects to make contribution of his share, the complainant may apply to a magistrate in whose jurisdiction the land is situated, who may then summon the owner or tenant so refusing or neglecting before two or more magistrates, *i.e.*, petty sessions. The summons may be served in the same way as the demand. The magistrates, upon proof of the demand and service of the summons, having examined into the complaint,[1] may determine the amount, if any, to be contributed, and by order under their hands and seals direct payment by the person liable, with the costs and charges of the proceedings. Payment of the amount may then

[1] As to what is a sufficient examination and determination by justices, see *Reg.* v. *Williams*, 18 Q. B. 393.

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be enforced by the complainant in the same way as rent-charge in arrear. And sect. 4 of 14 & 15 Vict. c. 25, provided that any owner or occupier paying, after notice of the tithe owner's intention to distrain, a rent-charge which became due[1] during the previous tenancy from the tenant by virtue of the terms of his holding, may recover the amount from the previous tenant as a simple contract debt.

These two provisions have not been repealed by the recent Act, and it is possible they may still be of practical importance in cases excepted from its operation. It is conceived they cannot have any application to cases within the Act.

[1] For this purpose it must be taken to accrue *de die in diem*, as the Apportionment Acts would apply to such a case (see p. 43).

CHAPTER VIII.

CHARGES UPON THE RENT-CHARGE.

By sect. 69 of the principal Act every rent-charge in lieu of tithes is subject to all parliamentary, parochial, and county and other rates, charges, and assessments to which the tithes commuted for it were liable.

By sect. 6, sub-sect. (4), of the Tithe Act, 1891, rates are defined to mean poor, highway, general district and borough rates, and every other rate assessed on an owner of tithe rent-charge by a public authority for public purposes.

The following, if not an exhaustive list, at all events contains the main rates to which tithe rent-charge is now liable under the above provisions.

1. Poor rate under 43 Eliz. c. 2, s. 1, including also county rate under 15 & 16 Vict. c. 81, borough rate under sect. 45 of the Municipal Corporations Act, 1882, highway rate under 5 & 6 Will. 4, c. 50, s. 27, school board rate under 33 & 34 Vict. c. 75, and any other rates and expenses provided by statute to be collected with and payable out of the poor rate.[1]

This rate is to be made on the net annual value of

[1] See *Farmer* v. *L. & N. W. Ry. Co.*, 20 Q. B. D. 788.

Ch. VIII. the rent-charge, *i.e.*, what the rent-charge would let for to a hypothetical tenant from year to year, free from all usual tenant's rates and taxes, and deducting from this hypothetical rent—

(1) All expenses of collection, including legal expenses;

(2) Losses by ultimate non-payment;

(3) Ecclesiastical dues, first fruits and tenths;

(4) The profit (if any) which the hypothetical tenant might be expected to look for beyond the remuneration for his trouble in collecting.[1]

The following would fall under the head of tenant's rates and taxes, and would therefore have to be allowed for in estimating the net annual value:—

(1) Poor rates, including county, highway, and school board rates;

(2) Income tax under Schedule B.;

(3) General rate under Metropolis Local Management Act;

(4) Lighting rate;

(5) General district rate under the Public Health Act, 1875;

(6) Rate for public libraries and museums.

If in any case the Court has made an order under sect. 8 of the Tithe Act, 1891, for a remission of a portion of tithe rent-charge, and is satisfied that in

[1] See *Reg.* v. *Capel*, 12 Ad. & E. 382; *Hackney and Lamberhurst Commutation*, 1 E. B. & E. 1; and *Reg.* v. *Inhabitants of Sherford*, L. R. 2 Q. B. 503.

Ag't assessment &c. see letter in "Land Union Journal" Nov 1921, p. 138

estimating the rateable value of the rent-charge such remission, or the liability thereto, has not been taken into account, it may remit a proportionate amount of any then current rate assessed on the tithe owner (sub-sect. (2)).[1]

Of any such order remitting an amount of rate, the registrar is to send, at the applicant's (*i.e.*, tithe owner's) expense, a certified copy to the overseers of the parish affected by the rate, and any collector of rates, may, on application, obtain from the Court a certified copy of any order for remission made by it within the past year in respect of rates assessed on an applicant (rule 35).

2. General district rate under 38 & 39 Vict. c. 55 (Public Health Act, 1875), in any urban district, upon one quarter of the net annual value of the rent-charge; and in any rural district the rate for general expenses, which is payable out of the poor rate, and any rate for special expenses, including expenses under Allotments Acts, chargeable upon one-fourth of the net annual value.

3. General rate under 18 & 19 Vict. c. 120, s. 161 (the Metropolis Local Management Act), upon the net annual value, as the poor rate.

4. Lighting rate under the same section of the same Act, and 3 & 4 Will. 4, c. 90.

5. Rate for public libraries and museums.

Till the passing of the Tithe Act, 1891, these rates and charges were assessed either—

(1) upon the occupier of the lands charged with the

[1] For a form of such order of remission, see Form 27 in Appendix to Rules.

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rent-charge under sect. 70 of the principal Act;[1] or

(2) upon the owner of the rent-charge under sect. 8 of 7 Will. 4 & 1 Vict. c. 69;

but now sect. 6, sub-sect. (1), of the Tithe Act, 1891, provides that any rate to which tithe rent-charge is subject shall be assessed on, and may be recovered from, the owner of the tithe rent-charge, "in the like manner and by the like process as on and from any occupying ratepayer," and repeals so much of any Act as authorises any rate on tithe rent-charge to be assessed on, or recovered from the occupier of the land.

It follows that all rates must now be assessed upon the tithe owner, and in default of payment must, if possible, be recovered from him as from an ordinary occupier of land.

If, however, the collector[2] is unable to so collect them, he may proceed as follows, viz., send to the registrar of the County Court a notice of an application by him, and as many copies of it as there are persons to be served, *i. e.*, tithe and landowners. The same procedure is then to be followed with regard to service of notice, notice of opposition, hearing of the application, and making of an order as far as possible as is provided in the case of an application for recovery of tithe rent-charge, substituting the rate collector for the applicant, the owner of the tithe rent-charge and the owner of the

[1] See, however, the doubt as to the legality of this, expressed by Lord Esher, M. R., in *Lamplugh* v. *Norton*, 22 Q. B. D. 452.

[2] For a definition of "collector," see sect. 6, sub-sect. (4), of the Tithe Act, 1891, p. 145.

lands out of which it issues for the respondent, and an order for the recovery of rates for one for recovery of tithe rent-charge[1] (rule 39).

If the Court on the hearing of the collector's application, and having heard the land and tithe-owners, if they appear, is satisfied that he is unable to collect the rates by the ordinary procedure, it may order the owner of the lands to pay the rent-charge to the rate collector until the amount of the rates, and any costs allowed by the Court, are paid (sect. 6, sub-sect. (2)). The order may be made not only in respect of rates then due, but of any future rates, and either generally or for any limited time (sub-sect. (3)). It would seem, therefore, that the Court may make a general order that in future the landowner is always to pay the amount of the rates to the collector instead of the tithe owner.

Rule 40 provides that every order for payment of the rent-charge to the rate collector shall also order that, if any sum due on account of tithe rent-charge is not paid within three months of its becoming due, to the collector by the landowner, the order will be enforced on the *ex parte* application of the collector, either by appointing a receiver or an officer to distrain on the lands as the case may be.[2]

And rule 41 provides that where a collector applies to enforce an order on the landowner to pay the tithe rent-charge to him, and an order has already been made in respect of arrears of rent-charge on the application

[1] For forms, see Forms 31 to 35 in Appendix to Rules.

[2] See pp. 106 *et seq.*

Ch. VIII. of the person entitled thereto, the Court may, instead of the order provided by rule 40, order that any money recovered, either by a receiver or by an officer of the Court appointed to distrain, shall be applied first in payment of the costs allowed by the Court, and of the amount due on account of rates.

Payment of the amount of any rates ordered by the Court to be paid by the landowner can be enforced against him by the collector in like manner as payment of arrears of rent-charge by a tithe owner.[1]

Besides rates, tithe rent-charge is liable to the following taxes, viz. :—

1. Land tax. Tithes were, prior to the Commutation Acts, liable to this tax (if not redeemed), under 38 Geo. 3, c. 5, s. 4, except in the case of the tithes belonging to small livings, exonerated from land tax under the statutes of that reign; and they were, by sect. 42 of the Act, if not paid within six days, recoverable by seizure and sale of the tithes. Upon the passing of the principal Act it is conceived that the rent-charge became liable to this tax under sect. 69, as a parliamentary assessment or charge. It is usually assessed upon the basis of the poor rate valuation; and under sect. 8 of 7 Will. 4 & 1 Vict. c. 69, would be assessed on the owner of the rent-charge; and prior to the Tithe Act, 1891, might, in default of payment by him, be recovered from any one or more of the occupiers of the lands out of which the rent-charge issued, in the same

[1] See pp. 106 *et seq.*

way as poor rate assessed upon them,[1] subject to the following conditions:— Ch. VIII.

(1) Notice in writing must have been given to the occupier twenty-one days previous to any of the half-yearly days of payment of the rent-charge.

(2) No occupier was liable to pay at any one time any greater sum than the amount of the rent-charge payable in respect of the lands occupied by him for the current half-year in which the notice was given.

Not being included in the definition of rates given in the Act of 1891, it is assumed that this tax, where it is payable, must still be recovered as above.

2. Property or income tax under 16 & 17 Vict. c. 34. Tithe rent-charge is chargeable on the annual value of the rent-charge as defined in 5 & 6 Vict. c. 35, Sched. A. No. 1, *i. e.*, on the amount for which the rent-charge would let by the year at a rack-rent, which would be the amount of rent-charge the tithe owner actually receives after deducting the necessary and reasonable expenses of collection.[2] From this annual value, again, are to be deducted tenths and other ecclesiastical dues, repairs of chancel, parochial rates, taxes and assessments, and land tax (if any). (5 & 6 Vict. c. 35, Sched. A. No. 5, and 16 & 17 Vict. c. 34, s. 32.)

[1] It was held in *Lamplugh* v. *Norton*, 22 Q. B. D. 452, that this was the only remedy, and that there was no direct remedy against the tithe owner, either by distress or otherwise.

[2] *Stevens* v. *Bishop*, 19 Q. B. D. 442, C. A. 20 *id.* 442, as explained in *Duke of Norfolk* v. *Lamargue*, 24 *id.* 485.

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This tax is assessed on the owner of the rent-charge under sect. 32 of 16 & 17 Vict. c. 34. It seems, however, that it may also still be assessed on the occupier of the lands under rule 4 of Sched. A. No. 4.

The rent-charge is also chargeable under Sched. B.

The provisions as to this are very confusing and difficult to understand; but apparently their intention is that the tax is to be assessed on, and paid by, the occupier of the lands, who is in consequence allowed a deduction of one-eighth of the duties payable by him under that schedule, and has no right to recover any payment in respect of this tax from the tithe owner.

Any land or tithe owner is empowered by sect. 3 of 2 & 3 Vict. c. 62 to give a notice in writing signed by him to the assessor or collector of any rate or tax in which he may be interested, requiring him to specify within forty days in his assessment made for the purpose of collecting and levying such rate or tax—

1. The names of the several occupiers of tithes, lands, and tenements subject to the rate or tax, and
2. The sum assessed on the tithes, lands, or tenements held by each occupier.

Again, by sect. 71 of the principal Act the rent-charge is subject to the same charges or incumbrances as the tithes commuted for it were; and by sect. 4 of 2 & 3 Vict. c. 62, where the whole of the great tithes, or the whole of the small tithes, or the rent-charge for which they have been commuted, are subject to any such[1] charge, incumbrance or liability, power is given

[1] The use of the word "such" in this section is clearly ungrammatical. It cannot refer to the preceding section, as that deals with

to the person entitled to the tithes or rent-charge, with the consent of the commissioners, and of the bishop of the diocese, specially to apportion the charge, incumbrance or liability on any part of the tithes or rent-charge which, in the opinion of the commissioners, is equal to at least three times the value of the charge, incumbrance, or liability apportioned on it. The expenses of any such apportionment are to be borne by the person at whose instance it is made, and are recoverable from him as the costs of an ordinary apportionment.[1]

rates and taxes. Probably the draftsman had sect. 71 of the principal Act before him, and the word "such" refers to that section.

[1] See p. 53.

CHAPTER IX.

EXTRAORDINARY TITHE RENT-CHARGE.

This rent-charge, which has been the subject of so much recent abuse, and so many disturbances, was in its inception perfectly equitable and reasonable, and, as will be seen, in many instances it owes its existence entirely to the action of the owner of the land charged.[1] It can hardly be disputed that upon the commutation of the tithe of produce into a rent-charge issuing out of the land, it was only just that land bearing a valuable crop, the tithe of which would be of greater value than that of ordinary produce, should be liable to a higher rent-charge than land under an ordinary crop. On the question whether it was desirable that any check should be imposed on the cultivation of produce of this kind on land previously cultivated in another way, no opinion is expressed; it is only sought to show that the existence of such a charge is amply justified by the nature of tithes at the time of its first creation.

The provisions in the Acts bearing upon this subject are somewhat confused, and, with the exception of those relating to redemption, have now little practical im-

[1] See next page, and note [1] thereto.

portance; it may, however, be convenient shortly to set them out in a collected form. Chap. IX.

The extraordinary charge was imposed upon lands cultivated in the following ways, viz.: as—

1. Hop grounds; 2. Market gardens; 3. Orchards; 4. Fruit plantations; and 5. Mixed plantations of hops and fruits.

It will be convenient to consider each of these in turn, taking one (*e. g.*, hops) first, and considering all the provisions affecting it, and then the others in turn, pointing out in what way the provisions affecting them agree with and differ from those affecting the first.

1. Hop grounds.

The extraordinary charge was created in three ways:—

(1) Where upon the commutation of tithes any land was cultivated as hop ground, sect. 40 of the principal Act, sects. 32 and 33 of 2 & 3 Vict. c. 62, and sect. 18 of 3 & 4 Vict. c. 15, provided that, upon application being made by the owner of the hop-ground,[1] the tithes should be separately valued according to the average rate of composition for the tithes of hops for seven years preceding Christmas 1835, within a district to be in each case assigned by the commissioners, or an assistant commissioner, or by a parochial agreement.[2] This

[1] Apparently there was no power to fix any extraordinary charge upon lands which were cultivated as hop grounds at the time of the commutation, except on the application of the owner of the land so cultivated.

[2] Apparently it could only be assigned by parochial agreement in the case of hop grounds (sect. 33 of 2 & 3 Vict. c. 62).

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district might be the parish or lands in respect of which the notice requiring the tithes to be separately valued had been given, or any part or parts of such parish or lands.

The value of the tithes was to be estimated as chargeable to all parliamentary, parochial, county, and other rates, charges, and assessments to which the tithes might be liable, and this value, when arrived at, either by assessment by the commissioners or by agreement, was to be added to the value of the other tithes of the parish.

For the purpose of ascertaining the extent of the land cultivated as hop grounds or market gardens, the person to whom any extraordinary charge upon the land is or would be payable, his agents and servants, may enter at all reasonable times upon the land, and make an admeasurement and plan of it, without molestation (sect. 43 of 23 & 24 Vict. c. 93).

The amount charged by the apportionment[1] upon any hop grounds in any district is distinguished into two parts, called the ordinary and extraordinary charge, the extraordinary charge being a rate per imperial acre, and the award of the commissioners or parochial agreement might declare the amount of extraordinary charge per acre with which all lands chargeable in the future with extraordinary charge within that district should be chargeable.

[1] By sect. 19 of 3 Vict. c. 15 the amount of extraordinary rent-charge to be charged on the lands of each individual owner need not be distinguished, so long as the acreable amount of extraordinary charge for all the lands in the district is inserted in the apportionment.

(2) In the case of any land situated within a district where an extraordinary charge had been settled, and not cultivated as hop ground at the time of the commutation, but subsequently becoming so, an additional rent-charge per acre, equal to the extraordinary charge per acre on hop grounds in the district, became chargeable after the first year of such cultivation, but only half such charge was payable during the second year. Upon the change in cultivation the land apparently became *ipso facto* liable to this extra charge without any application to the commissioners.[1] Chap. IX.

(3) In the case of any land not situated within a district where an extraordinary charge had been settled, and not cultivated as hop ground at the time of the commutation, but subsequently becoming so, the commissioners charged the lands with an additional or extraordinary charge only on the application of some person interested. In this case sect. 42 of 23 & 24 Vict. c. 93 gave the commissioners power to declare the lands in the parish in which the newly-cultivated hop grounds were situated a district within which the extraordinary charge then fixed should be thereafter payable.[2]

In this case, as in the last, no rent-charge was payable in the first year, and only half in the second.

2. Market Gardens.

The word "gardens," which occurs alone in one or two places, without the qualifying word "market," is

[1] See *Walsh* v. *Trimmer*, L. R. 2 H. L. 208.

[2] This power was exerciseable by the commissioners, even though no district had been assigned in the parish at the time of the commutation (*Russell* v. *Tithe Commissioners*, L. R. 6 C. P. 596).

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evidently intended only to extend to market gardens, and not to gardens cultivated for mere pleasure. This is obvious from the fact that in sect. 40 of the principal Act the word "gardens" occurs alone; whereas, in sect. 42, evidently speaking of the same thing, we find the words "market gardens." The two expressions "gardens" and "market gardens" in the Acts may, therefore, be taken as equally meaning only market gardens.

All that has been said as to the creation of the extraordinary charge upon hop grounds, except where expressly confined to hop grounds, applies equally in the case of market gardens, the words "market gardens" being read for "hop grounds," and "garden produce" for "hops."

It was, however, provided by sect. 1 of 36 & 37 Vict. c. 42 that after the passing of that Act no extraordinary charge should be created on any land newly cultivated as a market garden, except in a parish in which an extraordinary charge for market gardens was distinguished at the time of the commutation.

3. Orchards, and 4. Fruit Plantations.

The provisions as to the creation of the extraordinary charge upon these being in a great measure the same and intermixed, it will be convenient to treat them together.

(1) The extraordinary charge upon orchards, but not upon fruit plantations, could be created in the same way as that upon hop grounds considered under (1),[1]

[1] See pp. 125, 126.

substituting the word "orchards" for "hop grounds," and "produce" for "hops." Chap. IX.

(2) Sect. 26 of 2 & 3 Vict. c. 62 provided that where any lands in a parish, the tithes of which were being commuted, were cultivated as orchards or fruit plantations, upon notice in writing given by any owners having an interest in such lands equal to not less than two-thirds of the whole of such lands in the parish, the tithes of such lands should be distinguished into ordinary and extraordinary fruit-charge, as in the case of hop grounds.

(3) Sect. 27 of the same statute provides for lands becoming newly cultivated after the commutation as orchards or fruit plantations within a parish, in which there is already an extraordinary fruit-charge, becoming similarly chargeable, with certain qualifications as to the time when the charge was to commence in the case of various fruits.

5. Mixed plantations of hops and fruits.

The following provisions apply to mixed plantations:—

(1) Sect. 29 of 2 & 3 Vict. c. 62 provided that where lands within the limits of a parish in which an extraordinary fruit-charge had been distinguished were planted with fruit and hops, they should be liable only to the extraordinary fruit-charge or the extraordinary hop-charge, whichever should be highest.

(2) In the case of such plantations, which at the time of commutation were liable to both rectorial and vicarial tithes payable to different persons, sect. 30 of 2 & 3 Vict.

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c. 62 provided that the apportionment was to set out the same, distinguishing the amount of ordinary and extraordinary charge payable to each tithe owner, and dividing the whole acreable extraordinary charge between the tithe owners according to the quantity of land producing rectorial and vicarial tithe respectively.

(3) In the case of such plantations situate in any parish or district in which an extraordinary fruit-charge had been declared, the rectorial and vicarial tithes of which would, had there been no commutation, have been payable to different owners, sect. 31 of the same Act provided that the extraordinary charge should be divided between such owners in proportion to the extent of land occupied by the produce, which would have paid tithe to each of them respectively. The provisions as to total or partial exemption from extraordinary charge during the early years of the changed cultivation applicable to each class of produce apply equally to the mixed plantations.

Such was the law as to the creation of extraordinary rent-charge down to 1886, in which year it was provided by 49 & 50 Vict. c. 54, s. 1, that after the passing of that Act no extraordinary charge should be levied upon any hop ground, orchard, fruit plantation, or market garden thereafter newly cultivated as such.

This Act further provided that the commissioners should, as soon as possible, ascertain in every parish the capital value of the extraordinary charge on each farm or parcel of land in respect of which an extraordinary charge might then be payable. The rules by which

the commissioners are to be guided in doing this are given in sect. 3 of the Act. Chap. IX.

This value, when ascertained, is to be certified by the commissioners under their seal as the capital value of the charge.

Every such certificate is to be filed in the office of the commissioners, and any person requiring a copy thereof is to receive one on payment of the proper fee. This copy is, by sect. 11, sub-sects. (1) and (2), of the Act, made sufficient evidence of the certificate.

As soon as the commissioners have certified the capital value of any charge, the land affected thereby becomes charged with the payment of an annual rent-charge equal to 4 per cent. on the capital value certified, instead of the extraordinary charge.

The following are special incidents of this annual rent-charge:—

1. It is payable half-yearly on the same days as the extraordinary rent-charge for which it is substituted (sect. 4, sub-s. 3).

2. It is payable to the person to whom the extraordinary rent-charge would have been payable (sect. 4, sub-s. 4).

3. It has priority over all existing and future estates, interests, and incumbrances (sect. 4, sub-s. 3).

4. Any unpaid instalment of it may be recovered either—

(1) In the same way as arrears of rent-charge in lieu of ordinary tithe;[1] or

[1] *I. e.*, under the Tithe Act, 1891 (see pp. 100 *et seq.*). This rent-charge would seem to come for this purpose within the provision of sect. 10, sub-sect. (4), of that Act, see p. 149.

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(2) By action in the High Court or County Court, according to its amount; or

(3) By entry upon and perception of the rents and profits of the land subject to the charge (sect. 4, sub-s. 5).

5. It is not liable to any parochial, county, or other rate, charge, or assessment (sect. 4, sub-s. 5).

6. As between landlord and tenant it is payable by the landlord, notwithstanding any agreement to the contrary between them. Any tenant who, before the Act, had contracted to pay the extraordinary charge upon the land in his occupation, or any part of it, must, during the continuance of his tenancy, pay the equivalent amount of rent-charge to his landlord. In the case of a tenancy at will, or from year to year, the tenancy is deemed to determine at the time when it would if notice to determine it were given at the date of the passing of the Act.

The Act gives in sect. 14 the following definitions:—

1. "Landowner" means the person for the time being receiving the rack-rent of land, whether on his own account or as trustee, or who would so receive it if the land were let at a rack-rent.
2. "Tithe payer" means the person for the time being paying an extraordinary charge under the Tithe Commutation Acts.
3. "Tithe owner" means the person for the time being receiving an extraordinary charge under the Tithe Commutation Acts, whether on his own account or as trustee, and any person receiving a

rent-charge substituted under the Act for an extraordinary charge.

4. "Person" includes a body of persons, corporate or incorporate.

For the purpose of carrying the Act into effect, the commissioners may require the overseers of any parish to supply any information they may consider necessary as to the extraordinary tithe in the parish (sect. 8); and they have all the powers possessed by them in relation to any award or apportionment.[1]

All expenses incurred by the commissioners in carrying out the provisions of the Act are to be paid by the landowners in rateable proportion to the sum certified as the capital value on their respective lands, and may be recovered from them in the same way as the expenses of an apportionment.[2]

Power is given by sect. 12 of the Act to the Governors of Queen Anne's Bounty, in any case where they consider the income of any benefice, on which they have a mortgage, is diminished by the operation of the Act, to modify such mortgage as they may consider just and reasonable; and sect. 13 empowers the Ecclesiastical Commissioners, where fixed charges have been made on the income of benefices in receipt of extraordinary tithes in favour of other benefices, or of district churches or chapels in parishes, the incumbents of which are in receipt of extraordinary tithes, to make such alterations in the charges as they may consider equit-

[1] See pp. 19—23, 35.

[2] See p. 53.

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able, having regard to the altered state of things created by the Act.

The extraordinary charge having been created as above indicated, land can be freed from it in any one of the following ways:—

1. By ceasing to be cultivated as hop grounds, market gardens, orchards, or fruit plantations.

2. By exoneration of the land from the charge.

3. By redemption of the charge.

1. If hop grounds, market gardens, orchards, or fruit plantations, at any time cease to be cultivated as such, then the extraordinary charge upon such lands in respect of such cultivation ceases from the 31st of December next following, and the lands are only charged with the ordinary charge, as other lands (sect. 42 of the principal Act, and sect. 28 of 2 & 3 Vict. c. 62).

This, apparently, can only apply in the case of an extraordinary charge of which the capital value has not been certified under the Act of 1886. One of the facts to be taken into consideration by the commissioners in fixing the capital value is the power of the cultivator to cease cultivating in the peculiar way which renders the land chargeable with the extraordinary charge. If this power was intended still to continue with the like result after the certifying of the capital charge, then there would be no occasion to take it into account in fixing that charge.

2. Sect. 4 (sub-sect. 2) of 49 & 50 Vict. c. 54 enables the commissioners, upon the application of any person interested in land charged with a rent-charge under

that Act, to exonerate by order under their seal the land in question, or any part of it, from the charge, substituting, if necessary, other land held under the same title and subject to the same limitations. This substitution is not necessary in every case, and a portion of the land chargeable may be exonerated, leaving only the remaining portion chargeable, provided the value of such remaining portion is, in the opinion of the commissioners, equal to at least three times the certified capital value of the rent-charge. In every case of exoneration the land remaining chargeable, whether a portion of the land originally chargeable or land substituted for it, or both, must be equal, in the opinion of the commissioners, to at least three times the capital value of the rent-charge.

3. Redemption is provided for by sect. 5 of 49 & 50 Vict. c. 54.

Though by sub-sect. (1) the provisions of the section are said to apply in the case either of an extraordinary charge or of a rent-charge under that Act, yet in working it will be found that they can only be applied to the former by first ascertaining and certifying the capital value of it, when it in fact becomes a rent-charge under the Act.

The process of redemption varies in different cases:—

(1) Where the person entitled to the charge is the incumbent of a benefice. In this case the owner of, or any person interested in, the land may pay the amount of the certified capital value to the Governors of Queen Anne's Bounty, to be held or applied by them for the benefit of the incumbent for the time being, as in the

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case of redemption of ordinary tithe rent-charge.[1] The receipt of their treasurer is a sufficient discharge to the person paying.

(2) Where the person entitled to the charge is absolutely entitled to it in fee simple in possession, or can dispose of it absolutely, or give an absolute discharge for its capital value. In this case the owner of, or any person interested in, the land may give one month's notice to the person entitled to the charge, and may at the expiration of that time pay or tender to him the amount of the certified capital value of the charge, or any less sum they may agree upon.

(3) In any other case the owner of, or any person interested in, the land, may pay the amount of the capital value of the charge into the Bank of England to the account of the Paymaster General in the matter of the landowner and tithe owner (giving their names), and in the matter of the Act 49 & 50 Vict. c. 54. The money when so paid in is to be dealt with in the same way and to be applicable to the same purposes as money paid in under the Tithe Commutation Acts.[2]

In all three cases the commissioners, upon proof that payment or tender has been duly made, are to certify that the charge is redeemed. This certificate is final and conclusive, and absolutely frees the land from the charge from the date of the next half-yearly payment.

The following provisions in the Act of 1886 apply to redemption in the case of settled land:—

(1) Money applicable in the purchase of land to be

[1] See sect. 8 of 9 & 10 Vict. c. 73.

[2] See pp. 86, 87.

settled to or on any uses or trusts is applicable in or towards the redemption of a charge under the Act on land settled to or on the same uses or trusts (sect. 6, sub-sect. 1).

(2) Where a person is the tenant for life of land, subject to any charge under the Act, he may either—

(i) Borrow any money required for its redemption, charging the inheritance with repayment of the money with interest; the charge so created has the same priority as a rent-charge under the Act (sub-sect. 2 of sect. 6); or

(ii) Sell the land, or any part of it, or any other land settled to or on the like uses or trusts, and apply the proceeds in or towards the redemption of the charge.

SUPPLEMENT I.

TITHE ACT, 1891, AND RULES THEREUNDER.

54 VICT. c. 8.

An Act to make better provision for the Recovery of Tithe Rent-charge in England and Wales. [26th March, 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Liability of owner to pay tithe rent-charge, and modification of contracts with tenants.

1.—(1.) Tithe rent-charge as defined by this Act issuing out of any lands shall be payable by the owner of the lands, notwithstanding any contract between him and the occupier of such lands, and any contract made between an occupier and owner of lands, after the passing of this Act, for the payment of the tithe rent-charge by the occupier shall be void.

(2.) Where the occupier is liable under any contract made before the passing of this Act to pay the tithe rent-charge, then he shall cease to be bound by that part of his contract, but he shall be liable to pay to the owner such sum as the owner has properly paid on account of the tithe rent-charge which such occupier is liable under his said contract to pay, exclusive of any costs incurred or paid by the owner in respect of such tithe rent-charge, and every receipt given for such sum shall state expressly that the sum is paid in respect of that tithe rent-charge: Provided

that where the lands, out of which any tithe rent-charge issues, are occupied by several occupiers who have contracted to pay the tithe rent-charge, any of such occupiers shall be liable only to pay such proportion of the sum paid by the owner of the lands on account of that tithe rent-charge as the rateable value of the lands occupied by him bears to the rateable value of the whole of the lands occupied by such occupiers.

(3.) Such sum shall be recoverable from the occupier by distress in like manner as is provided by sections eighty-one and eighty-five of the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter seventy-one, and the enactments amending those sections, and not otherwise.

Recovery of tithe rent-charge through County Court.

2.—(1.) Where any sum due on account of tithe rent-charge issuing out of any lands is in arrear for not less than three months, the person entitled to such sum may, whatever is the amount, apply to the County Court of the district in which the lands or any part thereof are situate, and the County Court, after such service on the owner of the lands as may be prescribed, and after hearing such owner if he appears and desires to be heard, may order that the said sum, or such part thereof as appears to the Court to be due, be, together with the costs, recovered in manner provided by this Act, and tithe rent-charge as defined by this Act shall not be recovered in any other manner.

(2.) Where it is shown to the Court that the lands are occupied by the owner thereof, the order shall be executed by the appointment by the Court of an officer who, subject to the direction of the Court, shall have the like powers of distraint for the recovery of the sum ordered to be paid as are conferred by the Tithe Acts on the owner of a tithe rent-charge for the recovery of arrears of tithe rent-charge,

and no greater or other powers; and if there is no sufficient distress, the person entitled to the sum ordered to be recovered may proceed to obtain possession of the lands under section eighty-two of the Tithe Act, 1836.

(3.) In any other case the order shall be executed by the appointment by the Court of a receiver of the rents and profits of the lands, and of any other lands which would be liable to be distrained upon for the tithe rent-charge to which the order refers under the provisions of section eighty-five of the Tithe Act, 1836, and where any of such lands are held at one rent, together with other lands in another parish, the Court shall apportion the rent between the said lands and the lands in the other parish in proportion to their rateable value, in which case the payment of such apportioned rent by the occupier to the receiver shall in every respect, as between the occupier and the owner of the lands, be deemed to be a payment on account of the total rent payable to the owner of such lands. 6 & 7 Will. 4, c. 71.

(4.) Subject to the prescribed regulations, the County Court shall have the same powers over receivers as in any other case, and may confer on the person appointed receiver any powers which the Court can confer upon persons appointed receivers, but the Court shall not have power to order the sale of the lands.

(5.) Any sum ordered by the Court under this section to be recovered shall be payable by a trustee in bankruptcy, sheriff, or officer of a Court who is in possession of the lands, in like manner as if it were tithe rent-charge recoverable under the Tithe Acts.

(6.) Where the occupier of the lands out of which the tithe rent-charge issues is liable under any contract made before the passing of this Act to pay the tithe rent-charge, and is consequently liable by virtue of this Act to pay the amount thereof to the owner of the lands, the owner of the lands shall serve notice of such liability on the owner of

the tithe rent-charge, and thereupon, before an order under this section is made, there shall be such service on the occupier in addition to the owner as may be prescribed, and a hearing of such occupier if he appears and desires to be heard. Any owner of the lands who fails to serve such notice as aforesaid on the owner of the tithe rent-charge, shall not be entitled to recover from the occupier any sum which he has paid on account of tithe rent-charge as aforesaid, unless and until he has, after notice to the occupier of his application for the same, obtained from the County Court a certificate that there was good and sufficient cause for the failure to give such notice, and that the occupier has not been prejudiced thereby.

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(7.) Rules under this Act may regulate the procedure practice and costs under this Act in County Courts, and may direct what service shall be good service for the purposes of this Act on the owner or occupier of any lands or the owner of any tithe rent-charge, and may provide that, if the owner of any lands is not known, any proceeding under this Act may be taken against the owner of the lands without naming the person who is the owner.

(8.) The fees payable on the proceedings under this section shall not exceed those set forth in the schedule to this Act, and the fees, charges, and expenses in or incidental to any distress under this Act shall be the same as are for the time being payable under the Law of Distress Amendment Act, 1888.

51 & 52 Vict. c. 21.

(9.) Nothing in this Act shall impose or constitute any personal liability upon any occupier or owner of lands for the payment of any tithe rent-charge, or any other sum recoverable or payable under this Act, and the Court shall not, by virtue of this Act, or of the County Courts Act, 1888, have any power to imprison any such occupier or owner by reason only of the nonpayment of such tithe rent-charge or other sum, and shall in any other case have

51 & 52 Vict. c. 43.

no other or greater powers of fine or imprisonment than are conferred by the County Courts Act, 1888.

Rules.

3.—(1.) The Lord Chancellor may, after consultation with the Rule Committee of County Court Judges, make rules for carrying this Act into effect, and for regulating, providing, and prescribing any matter authorised by this Act to be regulated, provided, or prescribed by rules under this Act. In framing such rules regard shall be had to making the procedure as simple and inexpensive as is practicable.

(2.) Every rule under this Act shall be laid before each House of Parliament within forty days next after it is made, if Parliament is then sitting, or, if not, within forty days after the commencement of the then next ensuing session, and if an address is presented to Her Majesty by either House of Parliament within the next subsequent forty days on which the said House shall have sat, praying that any such rule may be annulled, Her Majesty may thereupon, by Order in Council, annul the same; and the rule so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Lands occupied rent free, &c.

4. Where a receiver appointed under this Act of the rents and profits of any lands satisfies the County Court that the lands are let on such terms as not to reserve a rent sufficient to enable the receiver to recover from the owner thereof the sum ordered to be recovered, the Court, after such service on the owner and occupier of the lands as may be prescribed, and after hearing such owner and occupier if they appear and desire to be heard, may direct that the order for such recovery shall be executed as if the occupier were the owner of the lands: Provided that any

such occupier shall be entitled in addition to any other remedy, unless he would have been liable to pay the tithe rent-charge under any contract made before the passing of this Act, to deduct from any sums at any time becoming due from him to the landlord under whom he holds, any amount which shall have been recovered from him under this section in respect of tithe rent-charge or costs, with interest thereon at the rate of four per centum per annum: Provided further, that such occupier shall be entitled, notwithstanding anything in this Act, to recover from such landlord by action at law any such amount which shall have been recovered from him under this section as aforesaid as money paid on the account of such landlord.

Restrictions as to costs.

5.—(1.) An application to a County Court for an order under this Act may be made on behalf of the tithe owner by his agent, although not a solicitor.

(2.) On any application to a County Court for an order under this Act, no costs either of a solicitor or of a witness shall be allowed in any case where the amount claimed is paid without further proceedings, nor where notice of intention to apply for time to pay the tithe owner's claim has been given (except in cases where costs could be allowed by the Court on a judgment summons), and when notice of opposition has been given within the prescribed time, the costs of a solicitor shall only be allowed for work done subsequent to the notice.

Rating of owner of tithe rent-charge.

6.—(1.) Any rate to which tithe rent-charge is subject shall be assessed on and may be recovered from the owner of the tithe rent-charge, in the like manner and by the like process as on and from any occupying ratepayer; and so much of any Act as authorises any rate on tithe rent-charge to be assessed on or recovered from the occupier of any lands out of which the tithe rent-charge issues is hereby repealed.

(2.) If the collector of the rate satisfies the County Court that he is unable to recover in manner aforesaid any rate assessed on the owner of any tithe rent-charge, the Court may, after such service on the owners of the tithe rent-charge, and of the lands out of which the tithe rent-charge issues, as may be prescribed, and after hearing such owners, if they appear and desire to be heard, order the owner of the lands to pay such tithe rent-charge to the collector until the amount of the rate, and any costs allowed by the Court, are fully paid; and the order may be executed as if it were an order under this Act for the payment of a sum due on account of the tithe rent-charge.

(3.) The Court may, if satisfied that the circumstances justify it, make such order as aforesaid in respect of any future rate, either generally or during the time limited by the order.

(4.) The expression "rate" in this section means a poor rate, highway rate, general district rate, borough rate, and every other rate assessed on an owner of tithe rent-charge by a public authority for public purposes; and the expression "collector" means the overseer, surveyor of highways, rate-collector, or other person authorised, for the time being, to collect the rate.

Power of appeal.

7. If any party in any action or matter under this Act shall be dissatisfied with the determination or direction of the judge of the County Court in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved by the judgment, direction, decision, or order of the judge may appeal from the same to the High Court, in such manner and subject to such conditions as may be for the time being provided by the rules of the Supreme Court regulating the procedure on appeals from inferior Courts to the High Court.

Remission of tithe rent-charge when exceeding two-thirds annual value of land.

16 & 17 Vict. c. 34.

8.—(1.) Where a sum is claimed on account of tithe rent-charge issuing out of any lands, and the County Court is satisfied that, if the sum claimed is paid, the total amount paid on account of the tithe rent-charge for the period of twelve months next preceding the day on which the sum claimed became payable, will exceed two-thirds of the annual value of the lands as ascertained and entered in the assessment for the purpose of Schedule B. to the Income Tax Act, 1853, or as certified as hereinafter mentioned, the Court shall order the remission of so much, whether the whole or part of the sum claimed, as is equal to the excess, and the amount so ordered to be remitted shall not be recoverable; and if the Court is satisfied that neither such remission, nor the liability thereto, has been taken into account in estimating the rateable value of the tithe rent-charge, the Court may remit such amount of any then current rate assessed on the owner of the tithe rent-charge as appears to the Court to be proportionate to the amount of the remission of tithe rent-charge.

(2.) Where the lands out of which any tithe rent-charge issues are assessed for the purposes of the said Schedule B. together with other lands, the surveyor of taxes for the parish in which the lands are so assessed, on the application of the owner or occupier of the lands, shall divide the annual value in such assessment between the lands out of which any tithe rent-charge issues and the other lands, and give notice of the annual value of the lands as determined on such division to the applicant and to the owner of the tithe rent-charge; and if either of them is dissatisfied with the annual value so determined, he may appeal to the general commissioners of income tax for the division in which the lands are assessed, and those commissioners, after due notice to and hearing the parties or their agents if any of them wishes to be so heard, shall finally determine the proper division of the annual value; and the

annual value of lands so determined as aforesaid shall, for the purposes of this section, be the annual value of the lands as ascertained for the purpose of the said Schedule B.

(3.) For the purposes of this section the owner of tithe rent-charge shall have the same right of appeal as the owner of lands, whether under the enactments relating to the said assessment or under this section.

(4.) If in any case the annual value of any lands is not ascertained and entered in the assessment for the purpose of the said Schedule B., the general commissioners of income tax for the division in which the lands are situate shall, on the application of the owner or occupier of the lands, ascertain the annual value of the lands for the purpose of the said Schedule B., and inform the applicant of the same.

(5.) The commissioners of taxes shall on demand and payment of one shilling give a certificate of the amount of the annual value of any lands under this section.

(6.) Where it appears from any award that a special apportionment has been made in pursuance of section fifty-eight of the Tithe Act, 1836, whereby tithe rent-charge has been charged specially upon certain closes of land in different proportions, and to the exclusion of certain of them, the Court shall not grant a remission under this section unless satisfied that the applicant would have been entitled to such remission if no such special apportionment had been made. 6 & 7 Will. 4, c. 71.

(7.) Where two or more tithe rent-charges issue out of the same lands, and a remission of tithe rent-charge has been made by a County Court under this section, the amount paid by the owner of the lands on account of tithe rent-charge shall be divided between the owners of such tithe rent-charges in proportion to the amount thereof as fixed by the apportionment or any altered apportionment.

(8.) This section shall not apply to any lands other than

those used solely for agricultural or pastoral purposes or for the growth of timber or underwood.

Definitions.

9.—(1.) A reference in this Act to the "owner" of lands or tithe rent-charge,—

(a) if the ownership of the lands or rent-charge is vested in the Queen in right of her Crown, means the Commissioners of Woods, in substitution for the Queen; and

(b) if the ownership of the lands or rent-charge is vested in the Duke of Cornwall, means the keeper of the records of the Duchy of Cornwall, in substitution for the Duke of Cornwall; and

(c) in any other case, means the same officers or persons as are mentioned in the Tithe Act, 1836.

6 & 7 Will. 4, c. 71, ss. 12, 13.

(2.) In this Act, unless the context otherwise requires,—

The expression "tithe rent-charge" means tithe rent-charge issuing out of lands and payable in pursuance of the Tithe Acts, and includes any rent-charge into which a corn rent has, either before or after the passing of this Act, been converted under the Tithe Act, 1860, and which is subject to the like incidents as such tithe rent-charge as aforesaid; but does not include a rent-charge payable under the Extraordinary Tithe Redemption Act, 1886, nor a rent-charge payable under the Tithe Act, 1860, in respect of the tithes on any gated or stinted pasture, nor a sum or rate payable for each head of cattle or stock turned on land subject to common rights or held or enjoyed in common.

23 & 24 Vict. c. 93.

49 & 50 Vict. c. 54.

23 & 24 Vict. c. 93.

The expression "prescribed" means prescribed by rules under this Act.

Commencement and application of Act and saving.

10.—(1.) This Act shall extend to every sum on account of tithe rent-charge which first becomes payable on or after the half-yearly day of payment of such tithe rent-charge

which occurs next after the passing of this Act, whether such sum accrued before or after that day, and shall not extend to sums due on account of tithe rent-charge which were in arrear before the passing of this Act, nor, except so far as relates to the assessment and recovery of rates, shall it extend to tithe rent-charge issuing out of the lands of a railway company.

(2.) A sum on account of tithe rent-charge shall not be recoverable under this Act unless proceedings for such recovery have been commenced before the expiration of two years from the date at which it became payable.

(3.) Nothing in this Act shall alter the priority of any tithe rent-charge in relation to any other charge or incumbrance upon any lands.

(4.) Any enactment in the Tithe Acts or in the Extraordinary Tithe Redemption Act, 1886, directing any expenses, rent-charge, or other sums to be recovered as tithe rent-charge, shall, as respects any sum becoming due after the passing of this Act, be construed to refer to the recovery of tithe rent-charge under this Act, save that the owner of the lands shall not be entitled to obtain any remission under this Act.

Under this see: a C.C. Judge has jurisdiction where applns by Valuer duly applied by the Commrs under the Tithe Acts for the recovery of sums due in respect of redemn - may R. v. Patterson 43 W.R. 127

Repeal.

11. Section eighty-four of the Tithe Act, 1836, is hereby repealed.

Extent of Act and short titles.

12.—(1.) This Act shall not extend to Scotland or Ireland.

(2.) This Act may be cited as the Tithe Act, 1891.

(3.) The Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter seventy-one, intituled "An Act for the commutation of Tithes in England and Wales," is in this Act referred to and may be cited as the Tithe Act, 1836, and that Act and the enactments amending the same passed before the

passing of this Act are in this Act referred to and may be cited as the Tithe Acts.

(4.) The Act of the session of the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter ninety-three, intituled "An Act to amend and further extend the Acts for the commutation of Tithes in England and Wales," is in this Act referred to and may be cited as the Tithe Act, 1860.

(5.) The Act of the session of the sixteenth and seventeenth years of the reign of her present Majesty, chapter thirty-four, intituled "An Act for granting to her Majesty duties on profits arising from property, professions, trades, and offices," is in this Act referred to and may be cited as the Income Tax Act, 1853.

SCHEDULE.

FEES UNDER SECTION 2 OF THE TITHE ACT, 1891.

Where the sum claimed does not exceed five pounds:

For notice of application to the Court ..... One shilling.
For making the order ..... One shilling and sixpence.

Where the sum claimed exceeds five pounds:

For notice of application to the Court ..... One shilling for every five pounds and fraction above five pounds or any multiple of five pounds of the sum claimed.

For making the order .. One shilling and sixpence for every five pounds and fraction above five pounds or any multiple of five pounds of the sum claimed.

But the total fee in any one case shall not exceed—

For notice of the application ..... Ten shillings.
For making the order..... Fifteen shillings.

RULES UNDER THE TITHE ACT, 1891.

Short title.

1. The following rules may be cited as "The Tithe Rent-charge Recovery Rules, 1891," and shall apply so far as may be practicable to all proceedings under the Tithe Act, 1891 (in these rules referred to as the Act).

Procedure on Application for Recovery of Tithe Rent-charge.

Application for order for recovery. [Forms 1, 2, 3.]

2. A person claiming to be entitled to a sum due on account of tithe rent-charge, who desires to obtain an order of Court for the recovery thereof, in these rules called the applicant, shall file with the registrar of the Court a notice of application according to the form in the Appendix which is applicable to the case, and as many duplicates or copies thereof as there may be persons to be served therewith.

No proceedings shall be invalid by reason only that the applicant has filed a notice of application according to one of the forms in the Appendix, and that form proves not to be the form applicable to the case.

Filing by applicant of occupier's liability notice.

3. Where a notice under sub-section six of section two of the Act, that the occupier of the lands is liable to pay the amount of the tithe rent-charge to the owner of the lands (in these rules called an occupier's liability notice) has been served before the notice of application has been filed the applicant shall on filing his notice of application file at the same time a copy of the occupier's liability notice.

Service of notice of application. [Form 4.]

4. The registrar of the Court shall appoint a day for the hearing of the application, and shall cause to be served on the owner of the lands out of which the tithe rent-charge issues, and, where an occupier's liability notice has been filed, on that occupier, one of the notices of application together with a notice according to the form in the Appendix. The service shall be made at least ten clear days before the day appointed for the hearing of the application.

Any owner and any occupier of lands on whom a notice of application is to be served is in these rules referred to as a respondent.

Notice of opposition. [Form 5.] [Form 6.]

5. A respondent desirous of opposing an application shall, at least five clear days before the day appointed for the hearing, file with the registrar of the Court notice of his opposition according to the form in the Appendix, and the registrar shall on the same day send notice thereof to the applicant according to the form in the Appendix.

Filing of occupier's liability notice where served after notice of application.

6. Where an applicant is served with an occupier's liability notice, after he has filed a notice of application and before an order has been made he shall file a copy of the notice with the registrar as soon as possible after the receipt thereof, and the registrar shall thereupon cause a notice of the application to be served on the occupier as hereinbefore provided.

Change of day fixed for hearing on service of occupier's liability notice after application. [Form 7.]

7. Where a copy of an occupier's liability notice has been filed with the registrar so short a time before the day originally appointed for the hearing that the ten clear days notice required by these rules cannot be given to the occupier of the lands, then the registrar shall appoint another day for the hearing in lieu of that originally appointed, and shall name that day in his notice to the occupier, and give notice of the change of day to the applicant and the owner of the lands.

Order made without hearing where no notice of opposition. [*See* Forms 8 and 9.]

8. Where no notice of opposition is given, the Court will, after the expiration of five clear days from the time limited for giving such notice, unless before that time the amount ordered to be recovered is paid into Court, make an order without a hearing, either appointing a receiver, or, if the applicant has stated in his notice of application that the lands are occupied by the owner thereof, appointing an officer of the Court to distrain.

Notice of opposition out of time.

9. Where a respondent files notice of opposition after the time limited by these rules for such notice, but before an order is made by the Court, the Court may allow that respondent an opportunity of being heard on such terms as to payment into Court or otherwise as the Court thinks fit; and in that case the Court shall appoint a day for the hearing, and cause notice to be given to the applicant and the respondent of the day so appointed.

Order where no appearance after giving notice of opposition.

10. Where notice of opposition has been given but no respondent appears at the hearing of the application, the application may be forthwith granted without proof of the applicant's title to the tithe rent-charge claimed, but the same costs of solicitor and witnesses shall be allowed as if a respondent had appeared.

Grounds of opposition not entertained unless mentioned in notice.

11. A ground of opposition not mentioned in the notice of opposition shall not be entertained by the Court except with the consent of the applicant, or by the leave of the Court, and the Court may grant that leave on such terms as to adjournment, payment of costs, or otherwise as the Court thinks fit.

Proof of authority by agent making application.

12. Where a notice of application is filed with the registrar by anyone as agent for a person claiming to be entitled to a sum due on account of the rent-charge, that agent shall, if required, produce a written authority from the person so claiming, or satisfy the registrar that he has general authority to collect tithe rent-charge on behalf of such person.

Proceedings against owner of lands without naming him.

13. Where the applicant states in his notice of application that he does not know, or cannot ascertain, the owner of the lands, or where it is found that service on the person named in the application as owner of the lands cannot be effected by post as hereinafter provided, any proceeding under the Act may be taken against the owner of the lands without naming him, and notices and documents may be served accordingly.

Additional service when desired by applicant.

14. Where an applicant in his notice of application states his desire that in addition to service on the person named in the notice of application as owner of the lands, there shall also be service on the owner of the lands, through the occupier or through the person receiving the rents and profits of the lands for or on behalf of the owner, and states the name of the occupier or person, then such additional service shall be made as in these rules provided, and such service shall be deemed to be good service on the owner of the lands, though the person named in the application as owner of the lands is not such owner.

Provisions as to Receiver.

Appointment of receiver. [*See* Form 8.]

15. The appointment of a receiver shall extend to any other lands which would be liable to be distrained upon

for the tithe rent-charge to which the order refers under section eighty-five of the Tithe Act, 1836.

Identification of lands liable to be distrained on under s. 85 of the Tithe Act, 1836. [*See* Form 8 and Forms 1, 2, 3.]

16. An applicant may in his notice of application specify, by their names and situation or other sufficient description, the lands which would be liable to be distrained on under the said section eighty-five other than those out of which the tithe rent-charge issues, and in that case the lands so specified shall be added to the schedule to the order appointing a receiver; but if the lands have not been so specified, or have been specified inaccurately, it shall be the duty of the receiver as soon as possible to specify such lands to the Court, or to make any corrections which may be necessary in the specification of the lands given by the applicant.

Person to be appointed receiver.

17. Where an applicant in his notice of application states that he desires a certain person therein named to be receiver, the Court shall appoint that person to be receiver unless for special reasons the Court otherwise determines.

Where no such statement is made in the notice of application, or where the Court does not appoint the person named in the notice of application to be receiver, the Court shall appoint such person to be receiver as the Court thinks fit.

The receiver, if not a permanent officer of the Court, shall give such security (if any) as may be required by the Court.

Notice by receiver to occupiers of land of his appointment. [Form 10.]

18. The receiver shall, on his appointment, give notice as soon as possible of his appointment to the occupiers of the lands of which he is receiver, and shall require them to attorn as tenants to him, and to give him such particulars as he may require with respect to their tenancies.

Ascertainment of particulars of tenancy from occupier.

19. Where an occupier of lands refuses to give to the receiver such particulars as he may require with respect to his tenancy, the receiver shall apply to the Court to issue a summons requiring the attendance of such occupier as a witness, and, if necessary, requiring the production of any books, deeds, papers, and writings in his possession or control.

Where tenant refuses to attorn,

20. Where an occupier of lands refuses to attorn tenant to a receiver, and it becomes necessary to enforce the payment of rent in arrear, the receiver shall apply to the Court

to make an order authorizing the receiver to distrain in the name of the owner of the lands, or such other order as the Court thinks just under the circumstances of the case. receiver to apply to Court. [Form 11.]

21. The receiver shall pay into Court without delay any sums received by him on account of the rents and profits of the lands, but may deduct therefrom the costs of any distress made by him, and also as remuneration for his services such amount as may have been allowed by the Court, not exceeding in any case five per cent. on the amount of the rents and profits received by him. Payments by receiver.

22. The registrar shall pay to the applicant any sums so paid into Court by the receiver until the amount ordered by the Court to be recovered is fully satisfied. When that amount has been so satisfied, the registrar shall discharge the order for a receiver, and pay the balance, if any, of any sums paid into Court by the receiver to the person entitled to the rents and profits of the lands on the application of that person. Application of money paid into Court by receiver.

23. Where the receiver finds that any of the lands of which he is appointed receiver are occupied by the owner thereof, he shall, unless the owner pays the sum ordered to be recovered or attorns tenant to the receiver, make a report thereon to the Court, and on any such report the Court may make an order directing that the order for recovery be executed against the lands in question in manner provided by the Act where the lands are occupied by the owner thereof, but the operation of the order shall be suspended for ten clear days, or, if the owner gives notice of objection, for such further time as the Court directs. Procedure where receiver finds that lands are occupied by the owner. [Forms 12 and 13.]

Notice of the order shall be given to the person whom the receiver alleges to be the owner, stating that unless he files with the registrar notice of objection before that time, the order will take effect ten clear days after the day on which it was made. [Forms 14 and 15.]

If notice of objection is filed, the registrar shall cause a day to be fixed for the hearing of the objection and give notice thereof to the person who has filed notice of objection, and the registrar shall further suspend the operation of the order accordingly. [Form 16.]

Where an order is made under this rule the Court shall appoint the person who has been appointed receiver to be

the officer to distrain upon the lands, unless for special reasons the Court otherwise determines.

Report that there is no sufficient Distress.

Report of result of distress by officer. [Form 17.]

24. Where the officer appointed by the Court to distrain on lands occupied by an owner finds that there is no sufficient distress on the lands, and that it would be useless to attempt any further distress, he shall make a report in writing to that effect to the applicant and to the Court.

Apportionment of Rent where a Receiver is appointed.

Apportionment of rent on making order for recovery. [Form 8, *and see* Forms 2, 3.]

25. Where it appears to the Court either from the notice of application, or at the hearing of an application, that any of the lands of the rents and profits of which a receiver is to be appointed are held at one rent together with other lands in another parish, the Court shall, on the appointment of a receiver or as soon thereafter as possible, apportion the rent in proportion to the rateable value of the lands as appearing in the valuation list, or if none, in the then last poor rate, and the apportionment shall take effect immediately it is made.

Apportionment where rent not apportioned on making order. [Form 18.]

26. Where no order of apportionment has been made and a receiver finds that any lands of the rent and profits of which he is appointed receiver are held at one rent together with other lands in another parish, he shall apply to the Court to apportion that rent, and the Court shall make an apportionment accordingly.

Notice to applicant and respondent of apportionment. [Form 18.]

27. Notice of an apportionment made under the last preceding rule shall be given by the registrar to the applicant and the respondent, and if neither applicant or respondent before the expiration of five clear days of the service of the notice file a notice of objection, the apportionment shall take effect.

Hearing of objection to apportionment. [Forms 19—21.]

28. Where an applicant or respondent before the expiration of five clear days files a notice of objection to the apportionment so made, the registrar shall appoint a day not less than ten days after the filing of the notice of objection for the hearing thereof, and on the hearing the Court shall make such order in relation thereto as the Court thinks just. Notice shall be given to the respondent

and applicant of the day appointed for hearing the objections at least six clear days before the time appointed.

Procedure where Lands are let at a Rent not sufficient to enable the Receiver to recover the Sum ordered to be paid.

Report by receiver, that lands are not let at sufficient rent.

29. Where a receiver appointed under the Act finds that the lands or any of them are let on such terms as not to reserve a rent sufficient to enable him to recover the sum ordered to be recovered, he shall make a report in writing to the Court to that effect, together with a statement stating the terms on which the lands are let and showing the sum ordered to be recovered, the costs to be recovered, the sum, if any, already recovered, and the sum remaining due in respect of the sum ordered to be recovered and costs, and also showing whether under the order of recovery he is receiver of any lands besides those in respect of which he made such report.

Notice of report and opportunity for hearing. [Forms 22 and 23.]

30. The Court, if satisfied on such report that a *primâ facie* case is made out for making an order under section four of the Act shall cause notice to be given—

(i.) to the occupier of the lands, naming a day for the hearing of the matter, and informing him that, unless the sum due is sooner paid, the order for recovery may be directed to be executed against him as if he was owner of the lands, and that if he has any objection to urge against such direction, he may appear and be heard on the day named, but that if he does not appear, the direction may be given in his absence;

(ii.) to the applicant and the owner of the lands, naming the day fixed for the hearing and informing them that they may appear and be heard on that day;

The notice shall be given not less than ten clear days before the day named for the hearing.

Order of Court on hearing. [Form 24.

31. The Court, after hearing the occupier of the lands, the respondent, and the applicant, if they or any of them appear and wish to be heard, may make an order appointing an officer to distrain on the said lands for the amount mentioned in the order, and in any such order shall give such directions as to the continuance of the receiver or otherwise as the Court thinks fit.

The order of distress shall include such sum on account of the costs incurred, either in respect of the duties of the receiver or otherwise, up to the date of the order as may be allowed by the Court.

Where an order is made under this rule, the Court shall appoint the person who has been appointed receiver to be the officer to distrain upon the lands, unless for special reasons the Court otherwise determines.

Remission of Tithe Rent-charge under Section Eight of the Act.

Notice of intention to apply for a remission. [*See* Forms 5 and 26.]

32. Where a respondent desires to obtain a remission in respect of his tithe rent-charge under section eight of the Act, he shall, in his notice of opposition, specify his intention to apply for such remission, and shall also state whether there is more than one tithe rent-charge issuing out of the lands.

The respondent shall produce on the hearing of the application the certificate of the annnal value of the lands.

Notice of application for remission to other owner of tithe rent-charge on same land. [Form 25.]

33. Where it appears to the registrar from the statement of the respondent or otherwise, that there is more than one tithe rent-charge issuing out of the lands in respect of which the application for remission is to be made, he shall cause notice to be served on the owner of any tithe rent-charge issuing out of the lands, other than that in respect of which the application is made, before an order for remission is made.

Order of recovery of second tithe rent-charge on the same lands granted on hearing of application.

34. If on the hearing of an application by the owner of one tithe rent-charge issuing out of any lands, an order for remission is made, and the owner of another tithe rent-charge issuing out of those lands appears and applies at the hearing for an order for the recovery of any sum due on account of his tithe rent-charge, the Court may, if the respondent appears at the hearing, make an immediate order for the recovery of any sum due on account of such other tithe rent-charge, and direct that the orders for the recovery of the two tithe rent-charges be simultaneously executed.

Certificate of remission of rates. [*See* Form 27.]

35. The registrar shall, at the cost of the applicant, send to the overseers of the parish a certified copy of any order for the remission of a rate affecting that parish, and any

collector of rates shall be entitled on application to obtain from the Court a certified copy of any order for remission made by that Court within the year last past in respect of rates assessed on an applicant.

Certificate where Occupier's Liability Notice has not been served.

Application for certificate where occupier's liability notice not served.

36. Where an owner of land has failed to serve an occupier's liability notice, and wishes to obtain a certificate from the Court under sub-section six of section two of the Act, he shall send an application to the registrar according to the form in the Appendix, and shall at the same time send a copy or duplicate of the application to the occupier in respect of whose liability to pay the tithe rent-charge the notice has not been served. [Form 28.]

Day to be appointed for hearing of application for certificate.

37. The registrar shall appoint a day for the hearing of the application, and shall send notice of the day appointed to the said owner and occupier, and in the notice to the occupier shall state that he may appear and be heard on that day in opposition to the granting of a certificate. [Forms 29 and 30.]

The notice shall be given not less than ten clear days before the day named for the hearing.

Costs of application.

38. All costs of any such application shall be paid by the owner of land making the same, unless the Court is of opinion that the opposition to the application is frivolous or vexatious.

Procedure for the Recovery of Rates.

Notice of application by collector of rates.

39. Where a collector is unable to recover any rate assessed on the owner of tithe rent-charge by proceeding against such owner as against an occupying ratepayer, and desires to obtain an order of the Court under sub-section two, or under sub-sections two and three of section six of the Act, he shall send to the registrar a notice of such application according to the form in the Appendix, and as many duplicates or copies thereof as there are persons to be served therewith. [Form 31.]

On the filing of such application the same procedure shall be followed, as far as applicable, as to the serving of notice of the application, as to notice of opposition, as to the hearing of the application and the making of an order, as [*See* Forms 32, 33, and 34.]

on an application for recovery of tithe rent-charge, with the substitution of the rate collector for the applicant, and the owner of the tithe rent-charge and the owner of the lands out of which the tithe rent-charge issues for the respondent, and of an order for the recovery of rates under section six of the Act for an order for the recovery of tithe rent-charge.

Application by collector for enforcement of order. [*See* Form 35.]

40. An order on the owner of lands to pay the tithe rent-charge to the collector until the amount of the rate and any costs allowed by the Court are fully paid shall further order that, if any sum due on account of tithe rent-charge is not within three months paid to the collector by the owner of the lands, the order will be enforced, on the ex parte application of the collector, either by appointing a receiver or by appointing an officer of the Court to distrain upon the lands as the case may be.

Order as to rates where order has been obtained for recovery of tithe rent-charge.

41. Where a collector makes an application for the enforcement of an order on the owner of the lands to pay the tithe rent-charge to him, and an order has already been made in respect of arrears of tithe rent-charge on the application of the person entitled thereto, the Court, instead of making the order provided in the foregoing rule, may order that any money recovered, either by a receiver or by an officer of the Court appointed to distrain, shall be applied first in payment of the costs allowed by the Court, and of the amount due on account of the rates.

Costs.

Costs at discretion of Court.

42. Subject to the provisions of the Act and these rules, all costs of and incident to any application to the Court or any proceeding under the Act or these rules shall be paid by or apportioned between the parties to the application in such manner as the Court thinks just, and, in the absence of any special direction, shall abide the event of the application.

Taxation of costs.

43. Subject to the provisions of the Act and these rules, all costs shall be taxed by the registrar of the Court, and the same scale of costs shall have effect, and the same allowances shall be made to witnesses as in similar proceedings under the County Courts Act, 1888.

Service of Notices and Documents.

Address for service.

44. Any person other than an applicant may give an address for service by sending a copy of an address in England or Wales to the registrar stating that it is to be an address for service.

The address given in an applicant's notice of application shall, if an address in England or Wales, be taken to be his address for service.

Service of notices, &c.

45. Any notice or other document may be served on an applicant, owner, or occupier of lands, or any other person by sending the notice or other document by registered letter through the post to the address for service of the person to be served, or if no address for service has been given, to his last known address in England or Wales.

Service where proceedings taken without naming owner of land.

46. Where any proceeding under the Act is taken against an owner of lands without naming him, then service of any notice or document may be sufficiently effected as follows:—

(i.) A copy of the notice or document shall be delivered at the house of the occupier of the lands, if one can be found on the lands, with a direction to such occupier to forward the same to the person to whom he pays rent; and

(ii.) One or more copies of the notice or document shall be posted on some conspicuous part or parts of the lands.

Substituted service by order of Court.

47. Where, from any cause, the service of a notice or document cannot be made according to the foregoing provisions of these rules, the Court may, upon an affidavit showing sufficient grounds, make such order for substituted service, or for the substitution for service of notice by advertisement or otherwise as the Court thinks fit.

Service where additional service is desired.

48. Where service is required under these rules to be made on an owner of lands through the occupier or through the person receiving the rents and profits of the lands for or on behalf of the owner, the registrar shall send a copy of the document to be served by registered letter through the post to that occupier or person, having previously endorsed on the copy a request to that occupier or person to send the same to the person to whom he pays rent or for whom he receives rent, as the case may be.

Service on owner in receipt of rents and profits good service on other owners.

49. Where land is owned by two or more owners of land, either as joint owners or otherwise, service of a notice or document on one of such owners who is in receipt of the whole or part of the rents and profits of the land shall, unless the Court otherwise directs, be deemed to be good service on all the owners, other than an owner in possession.

Provision as to service of notice to apply to giving of notice, &c.

50. The foregoing provisions as to the service of any notice or document shall apply where any notice or document is to be given, delivered, or sent under these rules.

Supplemental.

Joinder of new parties.

51. Where any proceedings are taken by a joint owner of a tithe rent-charge, or against a joint owner of lands when such proceedings should, in the opinion of the Court, have been taken by or against all the joint owners, then on application by any such joint owner, the Court may adjourn the proceedings in order that the other owners may be joined as parties, on such conditions as to payment of costs or otherwise as the Court thinks fit.

Applications in same Court to be made at the same time.

52. Where an applicant has several applications to make in the same Court for the recovery of tithe rent-charge in the same parish, he shall so far as possible file notices of such applications simultaneously, so that the Court may deal with them at the same time, and if an applicant neglects to file such notices simultaneously the Court may disallow any extra costs which in the opinion of the Court have been occasioned by such neglect on the part of the applicant.

Conduct of proceedings.

53. Where there are joint owners of a tithe rent-charge or of lands out of which tithe rent-charge issues, or where more than one application is made in respect of tithe rent-charge issuing out of the same lands, the Court may order any proceedings taken to be taken jointly, and may order which person shall have the conduct of the proceedings.

Clear days.

54. In these rules the expression "clear days" means that in all cases where any particular number of days is prescribed for the doing of any act or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day.

55. Non-compliance with any of these rules, or any rules incorporated therewith, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court shall so direct, but such proceedings may be set aside either wholly or in part as irregular or amended, or otherwise dealt with in such manner and upon such terms as the Court shall think fit. Non-compliance with rules not to render proceedings void.

56. The registrar may, under the general or special directions of the judge, exercise any powers or perform any duties of the Court under these rules, and in these rules the expression "Court" includes a judge or registrar exercising the powers of the Court in chambers as well as in open Court, but the registrar shall not deal with or decide any matter which is opposed or in which notice of opposition has been given and the person who has given notice of opposition appears, except on the application of the persons appearing in the matter. Exercise of powers of Court.

57. Where any matter or thing is not specially provided for under these rules, the same procedure shall be followed and the same provisions shall apply so far as practicable as in a similar matter or thing under the County Courts Act, 1888, and the rules made in pursuance of that Act. County Court procedure to apply where no procedure provided.

58. The forms in the Appendix where applicable, and where they are not applicable forms of the like character with such variations as circumstances may require, shall be used. Forms in Appendix.

APPENDIX TO RULES.

FORMS.

1.—Notice of Application where the Owner of the Lands is also Occupier.

Tithe Act, 1891.

In the County Court of holden at .

I (*a*) , give notice that I apply for an order for the recovery of the sum of pounds shillings and pence, due in respect of the tithe rent-charge issuing out of the lands described in the first part of the schedule to this application for the period of (*b*) , and which became payable on the day of 189 .

The owner of the said lands is (*c*) and the owner is himself the occupier thereof [*or* I do not know *or* cannot ascertain the owner of the lands].

I shall apply that the order for recovery be executed by the appointment of an officer to distrain under sub-section (2) of section 2 of the Act.

[(*d*) The lands in the same parish as those described in the first part of the schedule and occupied by the same person as those lands as owner thereof, are described in the second part of the schedule.]

Dated this day of 189 .

A. B.

[*or* E. F., agent for A. B., the person entitled to the sum due].

(*a*) Insert name, address, and description of applicant, or if application be made by agent, his name, address, and description, and statement that he is the agent for A. B., the person entitled to the sum due (address and description).

(*b*) Insert period.

(*c*) Insert name, address, and description of owner of the lands.

(*d*) This paragraph, and also the second part of the schedule which corresponds to it should be struck through if the applicant is unable to give the required particulars.

Schedule of Lands.

PART I.—Lands out of which Tithe Rent-charge issues.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

PART II.—Lands in the same parish occupied and owned by the same person as those in Part I.

Name or Description of Lands.	Parish in which situate.	County in which situate.

2.—NOTICE OF APPLICATION WHERE OWNER OF LANDS IS NOT THE OCCUPIER.

Tithe Act, 1891.

In the County Court of holden at .

I (*e*) give notice that I shall apply for an order for the recovery of the sum of pounds shillings and pence, due in respect of the tithe rent-charge issuing out of the lands described in the first part of the schedule to this application, for the period of (*f*) , and which became payable on the day of 189 .

The owner of the said lands is (*g*) [*or* I do not know *or* cannot ascertain the owner of the lands] and the occupier thereof is M. N. (*insert name and address*) [(*h*) who holds the lands at one rent together with lands in the parish of].

(*i*) [I shall apply that the order for recovery be executed by the appointment of X. Y. (*insert name and address*) as the receiver under sub-section (3) of section 2 of the Act.]

I have received no notice under sub-section (6) of section 2 of the Act, that the occupier is liable to pay the amount of the tithe rent-charge to the owner of the lands.

(*k*) [I desire that additional service on the owner of the lands be made through M. N., the occupier thereof *or* through P. Q. (*insert name and address*) the

person who receives the rents and profits of the lands for or on behalf of the owner of the lands.]

(*l*) [The lands described in the second part of the schedule are in the same parish as those described in the first part of the schedule, and are occupied by M. N. either as owner or as tenant under the same landlord under whom he occupies the lands described in the first part of the schedule.]

Dated this day of 189 .

A. B.

[*or* E. F., agent for A. B. the person entitled to the sum due.]

(*e*) Insert name, address, and description of applicant, or if application be made by agent, his name, address, and description, and statement that he is the agent for A. B., the person entitled to the sum due (address and description).

(*f*) Insert period.

(*g*) Insert name, address, and description of owner of the lands.

(*h*) These words should be struck out unless the applicant can give the required information.

(*i*) If these words are struck out or no name inserted an officer of the Court will be appointed receiver.

(*k*) Where additional service is required insert these words.

(*l*) This paragraph, and also the second part of the schedule which corresponds to it should be struck out if the applicant is unable to give the required particulars.

Schedule of Lands.

PART I.—Lands out of which the Tithe Rent-charge issues.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

PART II.—Lands occupied by M. N. in the same parish as those in Part I.

Name and Description of Lands.	Parish in which situate.	County in which situate.

3.—Notice of Application where Occupier's Liability Notice is Filed.

Tithe Act, 1891.

In the County Court of holden at .

I (*m*) give notice that I shall apply for an order for the recovery of the sum of pounds shillings and pence, due in respect of the tithe rent-charge issuing out of the lands described in the first part of the schedule to this application, for the period of (*n*) , and which became payable on the day of 189 .

The owner of the said lands is (*o*) [*or* I do not know *or* cannot ascertain the owner of the lands], and the occupier thereof is M. N. (*p*) [(*q*) who occupies the lands at one rent together with lands in the parish of].

(*r*) [I shall apply that the order for recovery be executed by the appointment of X. Y. (*insert name and address*) as the receiver under sub-section (3) of section 2 of the Act.]

(*s*) [I desire that additional service on the owner of the lands be made through M. N., the occupier thereof, *or* through P. Q. (*insert name and address*) the person who receives the rents and profits of the lands for or on behalf of the owner of the lands.]

(*t*) [The lands described in the second part of the schedule are in the same parish as those described in the first part of the schedule, and are occupied by M. N. either as owner or as tenant under the same landlord under whom he occupies the lands described in the first part of the schedule.]

Dated this day of 189 .

A. B., owner of the tithe rent-charge
[*or* E. F., agent for A. B. the person entitled to the sum due].

(*m*) Insert name, address, and description of applicant, or if application be made by agent, his name, address, and description, and statement that he is the agent for A. B., the person entitled to the sum due (address and description).

(*n*) Insert period.

(*o*) Insert name, address, and description of owner of the lands.

(*p*) Insert address and description.

(*q*) These words should be struck out unless the applicant can give the required information.

(*r*) If these words are struck out or no name inserted an officer of the Court will be appointed receiver.

(*s*) Where additional service is required insert these words.

(*t*) This paragraph and also the second part of the schedule which corresponds to it should be struck through if the applicant is unable to give the required particulars.

Schedule of Lands.

Part I.—Lands out of which the Tithe Rent-charge issues.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

PART II.—Lands occupied by M. N. in the same parish as those in Part I.

Name or Description of Lands.	Parish in which situate.	County in which situate.

4.—NOTICE TO RESPONDENT TO BE SERVED WITH THE DUPLICATE NOTICE OF APPLICATION.

Tithe Act, 1891.

No. of application .

In the County Court of holden at .

A. B., applicant (*insert address and description*).

[C. D.], owner of the lands (*insert, if known, address and description*).

[not known]. } Respondents.

[M. N., occupier of the lands (*insert address and description*)]. }

To (*u*) the owner of the land out of which the tithe rent-charge mentioned in the notice of application sent herewith issues.

[(*x*) And to M. N. occupier of the said lands.]

Take notice that the application by A. B., of which a copy is sent herewith, will be heard at the sitting of the Court to be holden at (*insert courthouse*) on the day of 189 at the hour of in the noon, and that if you wish to oppose the application you must, five clear days before the day appointed for the hearing, file with the registrar of this Court the notice of opposition given below.

And take notice that if you intend to apply for time to pay, or for a remission in respect of the tithe rent-charge, you must, in giving notice of opposition, specify that intention.

Dated this day of 189 .

Registrar.

	£	s.	d.
Amount of tithe rent-charge claimed			
Costs of this notice			
Amount upon the payment of which you will incur no further costs			

If you do not give notice of opposition or do not appear on the day appointed for the hearing, the Court may make an order against you in your absence.

(*u*) Insert name, address, and description of owner of the lands, if known.
(*x*) To be inserted where occupier's liability notice has been filed.

5.—Notice of Opposition.

Tithe Act, 1891.

No. of Application .

In the County Court of holden at .

In the matter of the application of A. B.

To the registrar of the County Court of .

Take notice that I wish to oppose the application of A. B., of which I have received notice, on the ground [*here state grounds, e.g.*, that I am not the owner of the lands in respect of which the application is made; *or* that the applicant is not the owner of the tithe rent-charge mentioned in the notice of application; *or* that the amount claimed in respect of the tithe rent-charge has been paid; *or any other grounds that are intended to be relied on*] [*or* (and) I intend to apply for a remission in respect of such tithe rent-charge or (and) for time to pay the claim].

[(*y*) And I state that M. N. is the occupier of such land.]

[(*z*) And I state that there is no other tithe rent-charge issuing out of the lands except that in respect of which the application is made, *or* that there is, besides the tithe rent-charge in respect of which the application is made, a tithe rent-charge issuing out of the lands in respect of (*e.g.*, *great or small*) tithe of which P. Q. (*insert name and address*) is owner].

Dated the day of 189 .

C. D., owner of the lands
(*or* G. K., solicitor of C. D.)
or M. N., occupier of the lands
(*or* G. K., solicitor of M. N.).

(*y*) Here, if the owner of the lands, state name, address, and description of the occupier.

(*z*) This paragraph should be struck out except where an order for remission is applied for.

6.—Notice to Applicant of Notice of Opposition.

No. of Application.

Tithe Act, 1891.

In the County Court of , holden at .

A. B., Applicant.
[C. D.], owner of the lands [*not known*] } Respondents.
[M. N., occupier of the lands] }

To A. B., applicant.

Take notice that C. D., owner of the lands in respect of which the application is made [*or* M. N., occupier of the lands in respect of which the application is made] has given notice of opposition in the above matter on the ground that

(*a*) [*or* (and) that he intends to apply for a remission in respect of the tithe rent-charge *or* (and) for time to pay the claim].

The application will be heard at the sitting of the Court to be holden at (*insert courthouse*) on the day of 189 , at the hour of in the noon.

Dated this day of 189 . Registrar.

(*a*) Insert ground stated in notice of opposition.

7.—Notice of Change of Day appointed for hearing Application.

[Heading as in Form 6.]

To A. B., applicant [*or* to C. D., owner of the lands in respect of which the application is made].

Take notice that for the purpose of giving M. N., the occupier of the lands in respect of which the application is made, an opportunity of being heard, the day for hearing the above application is changed, and the application will now be heard at the sitting of the Court to be holden at (*insert courthouse*) on the day of 189 , at the hour of in the noon.

Dated this day of 189 .

Registrar.

8.—Order on Application where Lands not occupied by the Owner.

[Heading as in Form 6.]

It is this day ordered that the sum of pounds shillings and pence be recovered, together with costs, in respect of tithe rent-charge issuing out of the lands described in [the first part of] the schedule to this order, due for the period of ; and for the purpose of recovering that sum, together with costs. X. Y. (*b*) is hereby appointed to receive the rents and profits of these lands, and also the rents and profits of any other lands (*c*) [*or* of the lands described in the second part of the said schedule], which would have been liable to be distrained upon for the tithe rent-charge under the provisions of section 85 of the Tithe Act, 1836; and that the tenants of the said lands are to attorn and pay their rents in arrear and growing rents to the receiver.

(*To be added where apportionment of rent is made at the time of making the order.*)

And whereas it appears that the above-mentioned lands [*or* a certain part of the above-mentioned lands, namely those known as (*d*)] are held at one rent together with other lands, situate in a different parish, it is further ordered that out of the total rent payable in respect of the lands situate in the two parishes, the sum of [15*l.*] shall be taken as payable for the purpose of the Tithe Act, 1891, in respect of the lands situate in the parish of , of which X. Y. is appointed receiver.

By the Court.

Dated the day of 189 . Registrar of the Court.

(*b*) Here insert name, address, and description of person appointed receiver.
(*c*) Insert these words if a description of the lands can be given.
(*d*) Insert description of lands.

Schedule of Lands.

PART I.—Lands out of which the Tithe Rent-charge issues.

Name or Description of Lands.	Name of Parish in which situate.	Name of County in which situate.	Number on Parish Apportionment.

PART II.—Lands which would be liable to be distrained on under section 85 of the Tithe Act, 1836.

Name or Description of Lands.	Parish in which situate.	County in which situate.

9.—ORDER FOR DISTRESS WHERE THE OWNER OF THE LANDS IS IN OCCUPATION.

[Heading as in Form 6.]

It is this day ordered that the sum of pounds shillings and pence, be recovered together with costs in respect of the tithe rent-charge issuing out of the lands described in the [first part of the] schedule to this order, due for the period of , and for the purpose of such recovery X. Y., an officer appointed by this Court, shall distrain upon those lands and also on the lands [(*e*) described in the second part of the same schedule] which are liable to be distrained on under section 85 of the Tithe Act, 1836, for the said sum together with pounds shillings and pence for costs, and also the costs of the distress, and that for the making of such distress this order shall be such officer's warrant.

By the Court.

Dated the day of 189 .

Registrar of the Court.

(*e*) Insert these words if a description of the lands can be given.

Schedule of Lands.

PART I.—Lands out of which the Tithe Rent-charge issues.

Name or Description of Lands.	Name of Parish in which situate.	Name of County in which situate.	Number on Parish Apportionment.

PART II.—Lands liable to be distrained on under section 85 of the Tithe Act, 1836, other than those described in Part I.

Name or Description of Lands.	Parish in which situate.	County in which situate.

10.—NOTICE TO OCCUPIER OF LANDS OF RECEIVER'S APPOINTMENT.

[Headings as in Form 6.]

To M. N., occupier of the lands described in the schedule.

I, X. Y. (*f*) hereby give you notice that under an order of Court made in the above matter on the day of , I have been appointed receiver of the rents and profits of the lands described in the schedule and occupied by you, and I require you, within days, to attorn tenant to me, and to give me information as to the following matters with regard to your tenancy (*g*).

Dated this day of 189 .

X. Y., Receiver.

Note.—A form of attornment is sent herewith.

Schedule of Lands.

[Here describe the lands, *e.g.*, Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. , Road, in the parish of , in the county of].

Form of Attornment.

[Heading as in Form 6.]

I, M. N., hereby attorn and become tenant to you X. Y., of the land described in the schedule according to the terms and condition contained in (*h*) and at the rent of £ thereby reserved.

In witness whereof I have hereunto set my hand this day of , 189 .

M. N.,

O. P. [*insert name and description*]
witness to the signature of the said M. N.

Schedule of Lands to Attornment.

[As in receiver's notice of appointment.]

(*f*) Insert name and address.
(*g*) Insert matter as to which information is required.
(*h*) Here insert description, date, and particulars of instrument under which the lands are held.

11.—Order for Distress in Name of Owner of Lands.

[Heading as in Form 6.]

It is this day ordered that X. Y., the receiver of the rents and profits of the lands described in the schedule to this order, be at liberty to distrain upon those lands for the rent due in respect thereof, and that such distraint may be made in the name of , owner of the lands.

By the Court.

Dated the day of 189 .

Registrar of the Court.

Schedule of Lands.

Name or Description of Lands.	Parish, &c., in which situate.	County in which situate.	Name of Occupier.

12.—Report of Receiver that Lands of which he is appointed Receiver are occupied by the Owner thereof.

[Heading as in Form 6.]

To the registrar of the County Court of holden at .

I, X. Y., who have been appointed receiver of the lands described in the schedule [together with other lands] by an order of the Court dated the

day of 189 , report to the Court that the lands described in the schedule are occupied by the owner thereof, and the owner has not paid the sum ordered to be recovered to me, and has not attorned tenant to me.

The name of the owner is (*insert name and address*), *or* is not known.

Dated the day of 189 .

X. Y.,
Receiver.

Schedule of Lands.

Name or Description of Lands.	Parish in which situate.	County in which situate.

13.—Order where Receiver reports that Lands of which he is appointed Receiver are occupied by the Owner.

[Heading as in Form 6.]

It is this day ordered that the order made in this matter on the day of 189 , appointing X. Y. to be receiver of certain lands described in the schedule shall be discharged [so far as regards the lands described in the schedule], and the said X. Y. [*or* R. S. an officer appointed by the Court] shall distrain upon those lands for the amount of pounds shillings and pence ordered to be recovered together with the sum of pounds shillings and pence for costs, and also the costs of distress, and that for the making of such distress this order shall be such officer's warrant.

By the Court.

Dated the day of 189 .

Registrar of the Court.

The operation of this order is suspended till day the day of 189 .

Dated the day of 189 .

Registrar of the Court.

Schedule of Lands.

[Schedule of Lands as in last Form.]

14.—Notice to Owner of Lands that an Order has been made on Receiver's Report that Lands of which he has been appointed Receiver are occupied by the Owner.

[Heading as in Form 6.]

To [C. D.] the owner of the lands described in the schedule to this notice.

Take notice that the order, a copy of which is sent herewith, has been made

in the above matter, and that if you have any objection to make against that order you must file notice thereof with me before the day of 189 .

A form of notice of objection is sent herewith.

Dated the day of 189 .

Registrar.

Schedule of Lands.

[Schedule of Lands as in last Form.]

15.—Notice of Objection by Owner of Lands.

[Heading as in Form 6.]

To the Registrar of the County Court of holden at .

Take notice that I, C. D., owner of the lands referred to in the order of Court, dated the day of 189 , of which I have received notice, object to that order on the ground that (*i*)

C. D.

Dated this day of 189 .

(*i*) Insert grounds on which order is objected to.

16.—Notice of Day appointed for Hearing Objection.

[Heading as in Form 6.]

To C. D.

Take notice that the objection to the order of the Court, dated the day of , of which you have given notice, will be heard at the sitting of the Court to be holden at (*insert courthouse*) on the day of 189 , at the hour of in the noon.

Dated this day of 189 .

Registrar.

17.—Report by Officer ordered to Distrain that there is no sufficient Distress.

[Heading as in Form 6.]

To the Registrar of the Court, and to A. B., applicant.

I, X. Y., the officer appointed to distrain under an order made on the day of on the lands described in the order, report that there is no sufficient distress upon the lands, and that it would be useless to attempt any further distress.

X. Y.

Dated the day of 189 .

18.—Notice of Apportionment of Rent.

[Heading as in Form 6.]

To A. B., applicant, and to C. D., owner of the lands described in the schedule [(*k*) and to M. N., occupier of these lands].

Take notice that whereas a receiver has been appointed of the rents and profits of the said lands [together with other lands] under an order of this Court dated the day of , made upon the application of the said A. B., and whereas it is found that those lands are held at the same rent with other lands situate in a different parish, and X. Y., the receiver appointed as aforesaid, has applied to the Court to make an apportionment of rent; now the Court has apportioned the rent so that out of the total rent payable in respect of the lands situate in the two parishes the sum of £ shall, for the purpose of the Tithe Act, 1891, be taken to be payable in respect of the lands of which the said X. Y. has been appointed receiver, situate in the parish of , and described in the schedule.

Further take notice, that if within five clear days of the service of this notice you do not file with me notice of objection, the above apportionment will take effect.

Dated this day of 189 .

Registrar.

(*k*) Insert this if M. N. is a respondent.

Schedule of Lands.

Name or Description of Lands.	Name of Parish in which situate.	Name of County in which situate.	Number on Parish Apportionment.

19.—Notice of Objection to Apportionment of Rent.

[Heading as in Form 6.]

To the Registrar of the County Court of , holden at .

I, A. B., C. D., or M. N., hereby give notice that I object to the apportionment of rent made for the purpose of the Tithe Act, 1891, of which you have given me notice, dated the day of .

Dated this day of 189 .

A. B., C. D., *or* M. N.

20.—NOTICE OF DAY FIXED FOR HEARING OF OBJECTION BY RESPONDENT TO APPORTIONMENT OF RENT.

[Heading as in Form 6.]

To A. B., applicant, and to C. D., owner of the lands [*or* M. N., occupier of the lands].

Take notice that the objection to the apportionment, of which you have given notice [*or* of which A. B., C. D., *or* M. N. has given notice] dated the day of , will be heard at the sitting of the Court to be holden at (*insert courthouse*) on the day of 189 , at the hour of in the noon.

Dated this day of 189 .

Registrar.

21.—ORDER OF COURT WHERE APPORTIONMENT IS OBJECTED TO.

[Heading as in Form 6.]

It is this day ordered that the apportionment of rent made in this matter dated the day of , [is hereby varied (*here state variation*), and as varied] shall take effect from this date.

By the Court.

Dated this day of 189 .

Registrar of the Court.

22.—NOTICE TO OCCUPIER OF LANDS THAT ORDER UNDER SECTION 4 OF THE ACT MAY BE MADE UPON HIM.

[Heading as in Form 6.]

To M. N., occupier of the lands described in the schedule to this notice.

Whereas X. Y. was, by an order of this Court, dated the day of 189 , appointed receiver of the rents and profits of the said lands of which you are occupier, for the purpose of recovering the sum of pounds shillings and pence ordered by the Court to be recovered on account of the tithe rent-charge thereon with costs, and he has satisfied the Court that the lands are let on such terms as not to reserve a rent sufficient to enable him to recover that sum and costs.

Take notice that the Court may direct the order for recovery to be executed as if you were the owner of the lands, and if you have any objection to urge against such direction being given, you must appear before the Court, holden at (*insert courthouse*) on the day of 189 , at the hour of in the noon, and such objection will be heard by the Court, but that if you do not appear the Court may make such direction in your absence.

Dated this day of 189 .

Registrar.

Schedule of Lands.

[Here describe the lands, *e.g.*, Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. , Road, in the parish of , in the county of .]

23.—Notice to Owner of Lands that Order under Section 4 of the Act may be made upon the Occupier.

[Heading as in Form 6.]

To [C. D.], the owner of the lands described in the schedule to this notice.

Whereas X. Y. was, by an order of this Court dated the day of , appointed receiver of the rents and profits of the lands described in the schedule to this notice for the purpose of recovering the sum of pounds shillings and pence ordered by the Court to be recovered on account of the tithe rent-charge thereon, with costs, and he has satisfied the Court that the lands are let on such terms as not to reserve a rent sufficient to enable him to recover that sum and costs.

Take notice that the Court may direct the order for recovery to be executed against M. N., the occupier of the said lands, as if he were owner, and that if you wish to be heard in reference to that matter you must appear before the Court holden at (*insert courthouse*) on the day of 189 , at the hour of in the noon, and the Court will hear you, but that if you do not appear the Court may make such order in your absence.

Dated this day of 189 .

Registrar.

Schedule of Lands.

[Here describe the lands, *e.g.*, Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. , Road , in the parish of , in the county of .]

24.—Order of Court under Section 4 of the Act.

[Heading as in Form 6.]

It is this day ordered that X. Y. as officer appointed by this Court [*or* R. S., an officer appointed by this Court] shall distrain upon the lands described in the schedule to this order for the sum of pounds shillings and pence [the balance] due on an order for the recovery of tithe rent-charge made by this Court the day of , together with pounds shillings and pence for costs, and also the costs of distress, and that for the making of such distress this order shall be such officer's warrant.

[It is also ordered that X. Y. shall continue to be receiver of the lands [till the day of], *or* shall cease to be receiver of the lands *or any direction the Court gives in the matter*.]

By the Court.

Dated this day of 189 .

Registrar of the Court.

Schedule of Lands.

[Here describe the lands, *e.g.*, Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. , Road, in the parish of , in the county of .]

25.—Notice to Owner of second Tithe Rent-charge of application for Remission.

[Heading as in Form 6.]

To O. P., owner of the tithe rent-charge issuing out of the lands described in the schedule in respect of (*e.g., great or small*) tithe.

Take notice that an application has been made by A. B. for the recovery of the sum of pounds shillings and pence due on account of the tithe rent-charge issuing out of the lands described in the schedule in respect of (*e.g., small or great*) tithe, and that C. D. (*or* M. N.) a respondent, has given notice that he will apply for a remission in respect of such tithe rent-charge.

The application will be heard at the sitting of the Court to be holden at (*insert courthouse*) on the day of 189 , at the hour of in the noon.

Dated this day of .

Registrar.

Schedule of Lands.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment.

26.—Order of Remission in respect of Tithe Rent-charge.

[Heading as in Form 6.]

It is ordered this day that, of the sum of pounds shillings and pence claimed by A. B. on account of the tithe rent-charge issuing out of the lands described in the schedule to this order, the sum of pounds shillings and pence is hereby remitted and shall not be recoverable.

By the Court.

Dated this day of 189 .

Registrar.

Schedule of Lands.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

27.—Order of Remission of Rates in respect of Tithe Rent-charge.

[Heading as in Form 6.]

It is ordered that the amounts mentioned in the third column of the schedule below shall be remitted and not recoverable in respect of the rates mentioned in the second column of that schedule assessed on the person mentioned in the first column thereof.

By the Court.

Dated the day of 189 .

Registrar.

Schedule.

Owner of Tithe Rent-charge.	Name of Rate.	Amount remitted.

28.—Application by Owner of Lands for Certificate in respect of Failure to give Occupier's Liability Notice.

Tithe Act, 1891.

In the County Court of , holden at .

I, C. D. (*insert name and address*), owner of the lands described in the schedule to this application, give notice that I shall apply for a certificate from the Court that there was good and sufficient cause for my failure to give an occupier's liability notice in respect of the said lands to M. N. the occupier thereof, and that M. N. (*insert name and address*) has not been prejudiced thereby.

Dated this day of 189 . A. B.

Schedule of Lands.

Name or Description of Lands.	Parish in which situate.	County in which situate.

29.—Notice to Occupier of Owner's Application to the Court in respect of Failure to serve Occupier's Liability Notice.

Tithe Act, 1891.

In the County Court of , holden at .

In the matter of the application of C. D.

To M. N., occupier of the lands described in the schedule.

Take notice that C. D. has given notice of an application to this Court for a certificate that there was good and sufficient cause for his failure to give an occupier's liability notice to you, M. N., in respect of the said lands, and that you, M. N., have not been prejudiced thereby.

If you wish to be heard with reference to the granting of such certificate, you must appear at the Court holden at (*insert courthouse*) on the day of 189 , at the hour of in the noon, and the Court will hear you, but if you do not appear no costs will be charged against you, but the Court may grant such certificate in your absence.

Dated this day of 189 .

Registrar.

Schedule of Lands.

Name or Description of Lands.	Parish in which situate.	County in which situate.

30.—Certificate of Court in respect of Failure to give Occupier's Liability Notice.

Tithe Act, 1891.

In the County Court of , holden at .

In the matter of the application of C. D.

It is hereby certified that there was good and sufficient cause for the failure of C. D. to give an occupier's liability notice in respect of the lands described in the schedule to this order to M. N. the occupier thereof, and that M. N. has not been prejudiced thereby.

By the Court.

Dated this day of .

Registrar.

Schedule of Lands.

Name or Description of Lands.	Parish in which situate.	County in which situate.

31.—Form of Application to Court by Rate Collector.

Tithe Act, 1891.

To the Registrar of the County Court of , holden at .

I, A. B., collector of rates for the (*l*) , apply to the above Court for an order under sub-section (2) [and sub-section (3)] of section six of the Tithe Act, 1891, in respect of (*m*) rate due from the owner of the tithe rent-charge issuing out of the lands described in the schedule.

The owners of the lands are (*n*) .
The owner of the tithe rent-charge is (*o*) .
The rate due amounts with costs to £ .

I have taken the following proceedings for the recovery of the rate [*insert description and date of proceeding, e. g.*, distress under warrant of justices].

Dated the day of 189 .

C. D., Collector.

(*l*) Insert name of area for which the collector collects.
(*m*) Insert name of rate or rates.
(*n*) Insert names and addresses of owners.
(*o*) Insert name and address of owner.

Schedule of Lands.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

32.—Notice to Owner of Tithe Rent-charge or Owner of Lands to be served with the Duplicate Notice of Rate Collector's Application.

Tithe Act, 1891.

No. of application .

In the County Court of holden at .

A. B., applicant [collector of rates for the of , whose address is].

[E. F.],[1] owner of land (*insert, if known, name, address and description*).

C. D., owner of the tithe rent-charge (*insert address and description*).

To E. F., the owner of the tithe rent-charge issuing out of the lands mentioned in the notice of application sent herewith.

or

To [C. D.], the owner of land out of which the tithe rent-charge mentioned in the notice of application sent herewith issues.

Take notice that the application by A. B., of which a copy is sent herewith, will be heard at the sitting of the Court to be holden at (*insert courthouse*) on the day of 189 , at the hour of in the noon, and that if you wish to oppose the application you must, five clear days before the day appointed for the hearing, file with the registrar of this Court the notice of opposition given below.

Dated this day of 189 .

Registrar.

	£	*s.*	*d.*
Amount of rate claimed			
Costs of this notice			
Amount upon payment of which you will incur no further costs			

If you do not give notice of opposition or appear on the day appointed for the hearing, the Court may make an order against you in your absence.

33.—Notice of Opposition.

Tithe Act, 1891.

No. of application .

In the County Court of , holden at .

In the matter of the application of A. B., rate collector.

To the Registrar of the County Court of .

Take notice that I wish to oppose the application of A. B., of which I have received notice, on the ground [*here state grounds, e. g.*, that I am not the owner

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[1] There seems to be a confusion in the alphabet here. One would have expected "C. D.," which letters are used in the rest of the form, and in succeeding forms, to denote the owner of land, while "E. F." are used to denote the owner of the tithe rent-charge.

of the land in respect of which the tithe rent-charge issues; *or* that I am not the owner of the tithe rent-charge mentioned in the notice of application; *or* that the amount claimed in respect of the rate has been paid; *or any other grounds that are intended to be relied on*].

Dated the day of 189

E. F., owner of the tithe rent-charge
(*or* G. K., solicitor of E. F.)
C. D., owner of the lands
(*or* G. K., solicitor of C. D.)

34.—NOTICE TO RATE COLLECTOR OF NOTICE OF OPPOSITION.

Tithe Act, 1891.

No. of application .

In the County Court of , holden at .

A. B., rate collector, applicant.
E. F., owner of tithe rent-charge.
C. D., owner of the lands.

To A. B., rate collector.

Take notice that E. F., owner of the tithe rent-charge in respect of which the application is made [*or* C. D., owner of the lands out of which the tithe rent-charge issues] has given notice of opposition in the above matter on the ground that (*p*)

The application will be heard at the sitting of the Court to be holden at (*insert courthouse*) on the day of , 189 , at the hour of in the noon.

Dated this day of , 189 .

Registrar.

(*p*) Insert ground stated in notice of opposition.

35.—ORDER UNDER SECTION 6 OF THE TITHE ACT, 1891, FOR RECOVERY OF SUM DUE ON ACCOUNT OF RATES.

Tithe Act, 1891.

In the County Court of , holden at , the day of 189 .

A. B., rate collector.
E. F., owner of tithe rent-charge.
[C. D.], owner of lands [*not known*].

It is this day ordered that C. D. pay to A. B. any sum which is now due or which may become due on account of the tithe rent-charge owned by E. F. issuing out of the lands described in the schedule to this order until the sum of pounds shillings and pence, the amount due in respect of the (*q*) rates assessed on the said C. D. in respect of that tithe rent-charge and costs [and any sum which may become due in respect of any such rate] [until the day of 189], is fully paid.

And further it is ordered that should default be made by the said C. D. in obeying this order, the said A. B. may apply to this Court for the appointment of a receiver or of an officer to distrain as the case may be.

By the Court.

Dated this day of 189 .

Registrar.

(*q*) Insert name of rate.

Schedule of Lands.

Name or Description of Lands.	Parish in which situate.	County in which situate.

SUPPLEMENT II.

A.—TABLE OF FEES, CHARGES, AND EXPENSES UNDER THE LAW OF DISTRESS AMENDMENT ACT, 1888, BEING APPENDIX II. TO THE DISTRESS FOR RENT RULES, 1888.

SCALE I.

Distresses for Rent where the Sum demanded and due shall exceed 20l.

For levying distress. Three per cent. on any sum exceeding 20*l.* and not exceeding 50*l.* Two and a half per cent. on any sum exceeding 50*l.* and not exceeding 200*l.*; and one per cent. on any additional sum.

For man in possession, 5*s.* per day; to provide his own board in every case.

For advertisements the sum actually and necessarily paid.

For commission to the auctioneer. On sale by auction seven and a half per cent. on the sum realized not exceeding 100*l.*, five per cent. on the next 200*l.*, four per cent. on the next 200*l.*; and on any sum exceeding 500*l.* three per cent. up to 1,000*l.*, and two and a half per cent. on any sum exceeding 1,000*l.* A fraction of 1*l.* to be in all cases reckoned 1*l.*

Reasonable fees, charges, and expenses (subject to Rule 17)[1] where distress is withdrawn or where no sale takes

[1] Rule 17 is as follows:—In case of any difference as to fees, charges, and expenses between the parties, or any of them, the fees, charges, and expenses shall be taxed by the registrar of the district in which the distress is levied. The registrar may make such order as he thinks fit as to the costs of such taxation.

place, and for negotiations between landlord and tenant respecting the distress.

For appraisement, on tenant's written request, whether by one broker or more, 6*d.* in the pound on the value as appraised, in addition to the amount for the stamp.

SCALE II.

Distresses for Rent where the Sum demanded and due shall not exceed 20l.

For levying distress, 3*s.*

For man in possession, 4*s.* 6*d.* per day; to provide his own board in every case.

For appraisement, on the tenant's written request, whether by one broker or more, 6*d.* in the pound on the value as appraised, in addition to the amount for the stamp.

For all expenses of advertisements, if any, 10*s.*

Catalogues, sale and commission, and delivery, 1*s.* in the pound on the net produce of the sale.

For removal at tenant's request, the reasonable expenses (subject to Rule 17)[1] attending such removal.

B.—COURT FEES.

TREASURY ORDER REGULATING FEES (LAW OF DISTRESS AMENDMENT ACT, 1888).

In pursuance of the powers given by the County Courts Acts, and of all other powers enabling us in this behalf, we, the undersigned, two of the Commissioners of her Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order that the several fees, or sums in the name of fees, specified

[1] See note to last page.

in the Schedule hereunder written, shall be taken on the proceedings therein mentioned, and that the fees so authorized to be taken shall be received by the registrars for the use of themselves.

(Signed) HERBERT EUSTACE MAXWELL.
,, SIDNEY HERBERT.

15th September, 1888.

I approve of the annexed Schedule of Fees.

(Signed) HALSBURY, C.

SCHEDULE.

The LAW OF DISTRESS AMENDMENT ACT, 1888, and the RULES made thereunder.

Fees to be taken in the following matters:—

	£	*s.*	*d.*
For every application for a general certificate	0	5	0
For every application for a special certificate	0	2	6
For approving of security by bond.....	0	10	6
For receiving deposit in lieu of bond.....	0	4	0
For taxation, where required, if the rent exceeds 20*l.*	0	10	0
For taxation, where required, if the rent does not exceed 20*l.*	0	5	0

SUPPLEMENT III.

(*See pp.* 77—79.)

23 & 24 VICT. c. 93, s. 32.—*Where land divided, commissioners may order rent-charge to be redeemed after apportionment.*] Whenever lands charged with rent-charge under any instrument of apportionment or altered apportionment shall be divided for building or other purposes into numerous plots, and it shall appear to the commissioners that no further apportionment of the said rent-charge can conveniently be made, the commissioners may, if they shall see fit, upon the application of any one owner of the said lands, and without the consent of any other owner, or of the person for the time being entitled to the receipt of the said rent-charge, and without limitation as to the amount thereof, by an order under their hands and seal direct that such rent-charge shall be redeemed by the payment by the owners of the lands chargeable therewith, within such time as the commissioners shall by such order direct and appoint, of a sum equal to twenty-five times the amount of such rent-charge.

41 & 42 VICT. c. 42, s. 5.—*Redemption of tithe on divided lands.*] Whenever lands charged with rent-charge under any instrument of apportionment or altered apportionment shall be divided for building or other purposes into numerous plots, and it shall appear to the commissioners that no further apportionment of the said rent-charge can conveniently be made, the commissioners may,

if they shall see fit, upon the application of the owner or of the person for the time being entitled to the receipt of the said rent-charge, and without limitation as to the amount thereof, by an order under their hands and seal, direct that such rent-charge shall be redeemed by the payment by the owners of the lands chargeable therewith, within such time as the commissioners shall by such order direct and appoint, of a sum of money not less than twenty-five times the amount of such rent-charge.

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